

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

**ITEM No. 32**  
**(IB)-331(ND)/2021**

**IN THE MATTER OF:**

State Bank of India

.... Petitioner/Applicant

v.

Mrs. Sunanada Khuranan

.... Respondent

**Order U/s. 95 of (IBC)**

**Order delivered on 15.04.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ**  
**HON'BLE MEMBER (JUDICIAL)**

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

**(HEARING THROUGH PHYSICAL MODE & VC)**

**PRESENT:**

For the SBI : Adv. PBA Srinivasan, Adv. V Aravind, Adv.  
Sumit Swami, Adv. Srishti Bansal

For the Respondent/PG : Adv. Ritika Jain  
Adv. Dyuti Ghai for RP to PG

**ORDER**

**IA-5921/2022, IA-2909/2022 & IA-3268/2022**

1. All these applications were preferred by the RP espousing an order in terms of proviso to Section 114(1) of IBC, 2016, as no repayment plan had been received. Nevertheless, subsequently the RP received a repayment plan dated 16.01.2024. For consideration of the plan, he sought to call a meeting of the Creditors.
2. As per the stand taken by the Ld. Counsel for the RP and also by the RP, the Creditors refused to participate in the meeting. Confronted with the plea, Mr. Srinivasan, Ld. Counsel appearing for the Creditor (SBI) submitted that it was not so that the Creditors refused to participate in the meeting called by the CoC, but it had only conveyed to RP that the plan was not as per the Regulation 17 of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. At this stage, the Ld. Counsel for the RP state that in any case, a meeting was held on 21.03.2024 in which the creditors sought time to exercise their right to vote, for which purpose they were given 14 days' time.

3. Nevertheless, instead of exercising their right to vote, the Creditors sent a message indicating therein that the plan was not as per Regulation 17 of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
4. As can be seen from the order dated 20.02.2024, a view was taken that the repayment plan was to be seen by the Creditors, thus the RP could proceed with the matter accordingly. The order dated 20.02.2024 reads thus:-

**IA-2909/2022 and IA-3268/2022**

Today, when the matter was taken up, the order dated 19.12.2023 was pointed out by the RP appearing through VC and his counsel Ms. Dyuti Ghai appearing physically.

Ld. Counsel Ms. Ritika Jain for the PG also appeared physically.

Order dated 19.12.2023 reads as follows:

**ORDER**

**“IA-5919/2022, IA-2908/2022, IA-3267/2022 & IA-5145/2022**

*Ms. Ritika Jain, Ld. Counsel appearing for the Personal Guarantor submitted that the Personal Guarantor has a proposal to repay the dues/debt buyable to the Creditors. Having submitted so, she prays for short adjournment.*

*The request for adjournment is opposed by Ms. Dyuti Ghai, Ld. Counsel appearing for the RP, who submitted that the Adjudicating Authority should approve the report of the RP regarding failure of the Personal Guarantor to repay the debt due to the Creditors, so that the Creditors can resort to their remedy in terms of the provisions of Section 121 of Insolvency and Bankruptcy Code, 2016.*

*It is also submitted by Ld. Counsel for the RP that the Personal Guarantor had ample opportunity to bring the repayment plan in the meeting of the Creditors and at this stage, when the RP has already submitted his report, which is pending for approval before this Adjudicating Authority, there is no scope for Personal Guarantor to bring any repayment proposal.*

*It is made clear that we have not expressed any view on acceptability of the proposal sought to be brought on record by the Personal Guarantor. We have also not expressed any opinion regarding extension of the CIRP Period. Irrespective of the repayment proposal sought to be prepared and brought on record by the Personal Guarantor, the pending applications would be examined.*

*Nevertheless, hearing is deferred to 17.01.2024 to see the repayment proposal sought to be brought on record on behalf of the Personal Guarantor.”*

In terms of the order dated 19.12.2023, a proposal has been given by the Personal Guarantor to the RP in all these cases.

On 19.01.2024 the proposal was received by the RP by email and the RP forwarded it to the creditors. It is being stated by Ld. Counsel for the RP that the creditors refused to come to the meeting on the ground that the proposal was not to be considered by them but by the Tribunal.

In view of the above, the question of entertaining the Plan before this Tribunal does not arise because the decision to accept the plan or reject the same is the sole discretion of the creditors. Therefore, we direct the RP to proceed further in the matter ignoring the direction issued by this Bench on 19.12.2023.

List the matter for a physical hearing **on 19.03.2024** along with all other pending applications.

5. As has been noted hereinabove, the CoC met on 21.03.2024, but instead of voting on the plan, the SBI pointed out that the plan was in defiance of the provisions of the relevant Regulations. In this backdrop, it is for the RP to take appropriate steps in accordance with the extent rules and regulations. Anyhow, in the wake of the subsequent developments, the RP seeks to withdraw IA-5921/2022, IA-2909/2022 & IA-3268/2022, the prayer wherein is to pass order in the wake of non-availability of repayment plan as subsequently the repayment plan, has been submitted but rejected.
6. In view of the prayer made by the RP, **IA-5921/2022, IA-2909/2022 & IA-3268/2022 stands dismissed as withdrawn.** It goes without saying that the RP has the liberty to take further steps in accordance with the law.

**IA-5142/2022**

7. The prayer made in this application reads as follows:-
  - i. Allow the present application ;
  - ii. Pass an order under Rule 11, NCLT Rules,2016 for an extension of 180 days from 17.10.2022 to enable the Resolution Professional to consider and approve the repayment plan of the personal Guarantor or in order to proceed and complete the insolvency process against the personal guarantor.

- iii. Any other order that the Hon'ble Tribunal may deem fit in the interest of justice and equity.
8. As has been mentioned in the application, the appointment of RP qua the Personal Guarantor/Respondent was confirmed on 09.09.2021 and the application filed under Section 99 of IBC, 2016 was allowed on 19.04.2022 in terms of which recommendation made by the RP for admitting the application filed under Section 95 of IBC, 2016 was accepted and the **CP (IB)-324(PB)/2021** was admitted.
9. From the date of admission of the application, the RP had 180 days' time to complete the Insolvency Resolution Process. Nevertheless, in the wake of pendency of challenge to vires of Sections 95 of IBC, 2016 before the Hon'ble Supreme Court in the matter of **Dilip B Jiwrajka v. Union of India and Others in Writ Petition (Civil) No. 1281 of 2021**, the Insolvency Resolution Process had to be held in abeyance, it was only on 09.11.2023, when the challenged vires of Section 95 of IBC, 2016 were upheld by Hon'ble Supreme Court.
10. In the wake of the aforementioned factual position as also for the reason that the RP was vigilant about his duty and prefer the appropriate applications from time to time viz IA-5921/2022, IA-2909/2022 & IA-3268/2022 and was never sleeping over his duties, in the wake of subsequent developments i.e. submission of repayment plan by Personal Guarantor, which according to the creditors is not in order, we extend the period of CIRP by 60 days from today i.e. from 15.04.2024 to 14.06.2024.
11. **IA-5144/2022 stands allowed & disposed of in the above terms.**

-Sd/-  
(AVINASH K. SRIVASTAVA)  
MEMBER (TECHNICAL)

-Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (JUDICIAL)

15.04.2024  
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