

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

Company Petition (IB) No. - 951(PB)/2020

Under Section 114 of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

State Bank of India	...	Applicant
Vs		
Waseem Ahmad Khan	...	Respondent

ORDER PRONOUNCED ON: 05.06.2024

CORAM:

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

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

APPEARANCES:

For the Resolution : Mr. Abhishek Anand and Mr. Karan Kohli, Advocates
Professional (RP)

For the Personal :
Guarantor

ORDER

IA-299/2023

1. This is a report in the form of an Application prepared and submitted by the RP under Section 112 and 113 of the Insolvency and Bankruptcy Code 2016 (IBC) on 11.01.2023 seeking an order of this Adjudicating Authority on the basis of said report in terms of Section 114 of the IBC. The prayer made in this Application is extracted below:

In the facts and circumstance, it is most respectfully prayed that this Hon'ble Adjudicating Authority may be pleased to:

- a. Allow the present application;*
- b. Pass appropriate orders under Section 114 (2) read with Section 115 (2) of the Code in view of the approval of repayment plan by the Creditors present and voting of the Personal Guarantor by 100% voting i.e. Mr. Waseem Ahmad Khan; and*
- c. Pass such other further order / order(s) as may be deemed fit and proper in the facts and circumstances of the case.*

2. The report states that Mr. Waseem Ahmad Khan, the Personal Guarantor had after modification submitted the final repayment Plan of total INR 9.67 crores as against a total admitted debt of INR 8,37,93,98,642/-.
3. It is stated that the Secured Creditors, Union Bank of India and HDFC had not forfeited their right to enforce security interest and also did not furnish any affidavit to claim voting rights for unsecured part of the debt, if any. Accordingly, Union Bank and HDFC were not given any voting rights in terms of section 110 of the IBC. It is also stated that State Bank of India also a secured creditor, who although relinquished security interest initially but did not vote on the Repayment Plan. Further in response to a query put forth by us, Ld. Counsel for the RP furnished a clarification by the way of affidavit dated 11.05.2024 stating that PNB Haldwani had not forfeited its security interest only in respect of S. S. Metal Recycling Industries and thus accordingly proportionate Voting Right for the PNB Haldwani was reduced. So far as PNB Moradabad is concerned states that it had forfeited its interest and was duly assigned voting rights.
4. The aforesaid Repayment plan was deliberated upon and put for e-voting in 7th meeting of Creditors dated 28.11.2022. Voting rights were given only to those creditors present and voting. As stated above, the secured creditor, Union Bank of India and HDFC Bank who did not forfeit security interest were not given voting rights. PNB Haldwani was given voting rights only for the securities forfeited. State Bank of India, despite having voting rights, did not vote on the repayment plan. The Repayment plan received 100% votes in favour. However, it is stated that since the repayment plan proposed the sale of properties under charge of the secured creditors, it was incumbent to seek concurrence under section 110(5). Accordingly, RP sent an email dated 03.12.2022 seeking concurrence from Union Bank of India, HDFC Bank and State Bank of India, which was refused by all the said secured creditors i.e.,

Union Bank of India vide email dated 05.12.2022, HDFC Bank and State Bank of India vide email dated 21.12.2022.

5. In view of the above, the RP has prepared a report under section 112 and submitted the same under section 113 seeking order on the basis of same under Section 114 of the IBC.
6. Personal Guarantor has also filed reply on 05.12.2023 to the Report of the RP, wherein it is stated that plan has already been approved with 100% votes in favour and since Union Bank of India and HDFC have failed to file affidavit under section 110(3), they shall be deemed to have relinquished their security interest. Further, State Bank of India had already forfeited its right to security interest and thus there was no occasion for the RP to seek concurrence from State Bank of India.
7. In reference to concurrence sought by RP from SBI despite the fact that SBI had initially forfeited the right and willingly did not exercise voting right, we sought a clarification from the Ld. Counsel for the RP. In response to the said query, Ld. Counsel for the RP apprised us of the provision delineated within section 110(5), which mandates that in a scenario where a secured creditor opts out of voting procedure and repayment plan significantly affects the right of such secured creditor to enforce security, then concurrence must be sought. The RP in para 7 of the affidavit dated 11.05.2024 states as follows:

I state that the repayment plan proposed affects the right of State Bank of India to enforce its security interest and therefore as State Bank of India was absent in the voting, concurrence under Section 110(5) of the Code was sought by the Deponent.
8. Further, so far as HDFC and Union Bank of India are concerned, as they have not forfeited their security interest, they would have to file affidavit under section 110(3) only to enforce their voting right with respect to unsecured part of their debt, if any. They would not be required to file affidavit under section 110(3) to exercise their security

interest. Hence, we hold that the RP was acting as per law in seeking concurrence under section 110(5) from HDFC and Union Bank of India.

9. We have considered the content of the report and the Reply filed by the Personal Guarantor and also the additional affidavit dated 11.05.2024 given by RP as sought by us vide order dated 03.04.2024.
10. We see that the RP had initially prepared the list of creditors with the voting rights assigned to each creditor, which is extracted herein below:

S.N.	Financial Creditors	Name of Company for Which Guarantee Given	Amount Claimed	Amount Admitted	% age of Total claim
1	Asset Care And Reconstruction Enterprises Limited (Acre) (Acting in its capacity as trustee of ACRE-30-Trust)	Multiwal Pulp & Boards Mills Pvt Ltd	2,08,75,23,170	2,08,75,23,170	24.91
2	Union Bank of India (Erstwhile Corporation Bank)	Multiwal Pulp & Boards Mills Pvt Ltd Multiwal Duplex Pvt Ltd	1,87,13,50,463	1,87,13,50,463	22.33
3	State Bank Of India	Multiwal Pulp & Boards Mills Pvt Ltd	1,66,97,43,184	1,66,97,43,184	19.93
4	HDFC Bank Ltd.	Multiwal Pulp & Boards Mills Pvt Ltd Bright Star International	1,26,98,67,424	1,26,98,67,424	15.15
5	Standard Chartered Bank	Multiwal Pulp & Boards Mills Pvt Ltd	59,45,14,398	59,45,14,398	7.09
6	Punjab National Bank (Haldwani)	Multiwal Pulp & Boards Mills Pvt Ltd S.S. Metal Recycling Industries Shree Prabhu Sharan Ispat Udhog Pvt Ltd.	46,94,35,575	46,94,35,575	5.6
7	Punjab National Bank (Moradabad)	Multiwal Duplex Pvt Ltd	41,69,64,428	41,69,64,428	4.99
	TOTAL		8,37,93,98,642	8,37,93,98,642	100

11. On perusal of minutes of meeting of creditors, we found that the following security interest was created by the personal guarantor in the manner extracted below:

S. N.	Property Detail	Area In hectare / Sq Mt.	Charge Holder Name
1	Property of Waseem Ahmed Khan Khata No-145, Khasra No. 84 (13th Km stone NH 74 Delhi Moradabad Highway, western side of the total plot) (One title deed No. 3525, Area-1.23+3/4acre) at Lodhipur Rajput .	5008.10 Sq. Mt.	State Bank of India – Exclusive charge to SBI
	Property of Waseem Ahmed Khan 1.23+3/4 acre land located at Lodhipur Rajput Khasra No. 84 (13th Km stone NH 74 Delhi Moradabad Highway, eastern side of the total plot) standing in the (One title deed No. 8470).	5008.10 Sq. Mt.	HDFC- Second Pari passu charge with SBI
2	Property of Waseem Ahmed Khan at Khasra No. 1 M, 2M & 3M Khata no. 22,48 & 49 Gram- Sandhkera , Bazpur Road, Kashipur. Comprising one title deed with registration no. 5981, Area 2.023 Hectare. Property belonging to Waseem Ahmed Khan, Khasra No. 1M, 2M & 3M Khata No. 22, 48 & 49 Gram Sandhkera , Bazpur Road, Kashipur (comprising of one tile deed -registration No. 2420, of 2.023 Hectare).	2.023 Hectare 2.023 Hectare	SBI & HDFC – Pari passu charge between SBI & HDFC
3	Property of Waseem Ahmed Khan Khasra No. 72 Min., Village Dabhora Ahatmali , Kashipur, Distt US Nagar. Land comprising one title deeds registration no - 861 area 3.424 hectare). Property of Waseem Ahmed Khan Khasra No. 73 Min. Village Dabhora Ahatmali , Kashipur, Distt US Nagar. Land comprising of one title deed with registration no 2309 area 5.059 hectare).	3.424 Hectare 5.059 Hectare	SBI & HDFC – Pari passu charge between SBI & HDFC

4	Pari Passu Charges of Land Khasra No. 70 Min., Village Dabhora Ahatmali , Kashipur, total area 2.631 hectare, security in name of shree Waseem Ahmad.	2.631 hec	PNB Haldwani-Equitable mortgage
5	Pari Passu Charges on land at Village Dabhora Ahatmali , Kashipur, total area 0.607 hectare, vide khasras no 72, in name of Waseem Ahmad.	0.607 hec	UBI- Pari passu charge PNB Muradabad- (Pari passu)
6	Pari passu charge of land khasras no 79,80 & 85 min village, dhabora mustakam Kashipur having total area 1.858 hectare. In the name of shree Waseem Ahmad.	1.959H ec. (1.619+0.069+0.17+0.101)	PNB Haldwani-Equitable mortgage

7	Immovable property comprising all part and parcel of land in Khasra No.72 min measuring 3.804 Hectare registered in Bahi no.1 Zild No.1263 page No.1*4 and Sr. No.860 dated 24.02.2004 as per registered sale deed 143 situated at Village Dabhora Ahatmati , Tehsil Kashipur Distt. U.S.Nagar in the name of Waseem Ahmad Khan	3.804 hec	PNB Haldwani- Equitable mortgage
8	EM of land in fro of factory at 9.2 km stone at NH 74 village dabhora mustkam bazpur road, kashipur at khasra no.81 & 85 min measuring 1.280 hectare in the name of Mr. Waseem Ahmad Khan.	1.28 Hec.	PNB Haldwani- Equitable mortgage
9	Pari passu Charge on land builing at mohalla kisrol, moradabad area 118.93 sq mt. vide sale deed dated 27.09.1983 in name if Mr. Waseem Ahamad khan	118.93 sq mt.	UBI- Pari passu charge PNB (Muradaba d)-Pari Passu Charge
10	Pari Passu charge on land at bahi no -1, Zild no 1162, page no 443-456 sl no. -894, registered on 14.03.2002, at sub registrar kashipur total area 1.238 hectare in the name of Waseem Ahmad khan	1.238 hct.	UBI- Pari passu charge PNB (Muradaba d)-Pari Passu Charge

11	<p>Exclusive Charge on the open land vide khasras. 3073,3178,3179,3180,3181,3184,3185no,3197,3198,3150,3152,3195,3196,3200 3201,3153/1,3207 & 3208 total area 43280 sq meter situated at village Lakri Fazalpur, tehsil & Dist- Moradabad in name of M/S BRIGHT STAR INTERNATIONAL Prop. Waseem Ahamad Khan</p> <p>Remarks :-</p> <table border="1"> <thead> <tr> <th>Name of Owner</th> <th>Area</th> <th>Remarks</th> </tr> </thead> <tbody> <tr> <td>Waseem Ahmad Khan & Bright Star International</td> <td>1.155348 (0.1165+0.28328+ 0.7546)</td> <td>-</td> </tr> <tr> <td>Farah Khan</td> <td>0.908</td> <td>-</td> </tr> <tr> <td>Shagufta Khan</td> <td>1.015</td> <td>-</td> </tr> <tr> <td>Sadaf waseem</td> <td>1.243</td> <td>She is not under personal insolvency</td> </tr> </tbody> </table>	Name of Owner	Area	Remarks	Waseem Ahmad Khan & Bright Star International	1.155348 (0.1165+0.28328+ 0.7546)	-	Farah Khan	0.908	-	Shagufta Khan	1.015	-	Sadaf waseem	1.243	She is not under personal insolvency	4.328 Hect	UBI- Exclusive charge
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Sadaf waseem	1.243	She is not under personal insolvency																
12	<p>Land & Building admeasuring 272.73 sq. meters located at H.No. 25, Deputy Gunj. (Daulat Bagh) Ward no 23, Thane Naghphani, Moradabad (Landmark for property-Near Gol Kothi) Owned and mortgaged by Mr. Waseem Ahmad Khan. (Exclusive Charge)</p> <p>Remarks :- OTS was sanctioned and full amount paid. HDFC agreed to release the paper of the property.</p>	272.73 Sq. mt	HDFC- Exclusive charge															

12. Among all the secured creditors, Union Bank of India and HDFC, were those who did not forfeit their right to enforce security interest. While PNB Haldwani forfeited security interest partially.

13. At this stage we are inclined to discuss section 110 of the IBC, which reads as follows:

110. Rights of secured creditors in relation to repayment plan. –

(1) Secured creditors shall be entitled to participate and vote in the meetings of the creditors.

(2) A secured creditor participating in the meetings of the creditors and voting in relation to the repayment plan shall forfeit his right to enforce the security during the period of the repayment plan in accordance with the terms of the repayment plan.

(3) Where a secured creditor does not forfeit his right to enforce security, he shall submit an affidavit to the resolution professional at the meeting of the creditors stating - (a) that the right to vote exercised by the secured creditor is only in respect of the unsecured part of the debt; and (b) the estimated value of the unsecured part of the debt.

(4) In case a secured creditor participates in the voting on the repayment plan by submitting an affidavit under sub-section (3), the secured and unsecured parts of the debt shall be treated as separate debts.

(5) The concurrence of the secured creditor shall be obtained if he does not participate in the voting on repayment plan but provision of the repayment plan affects his right to enforce security.

Explanation. – For the purposes of this section, "period of the repayment plan" means the period from the date of the order passed under section 114 till the date on which the notice is given by the resolution professional under section 117 or report submitted by the resolution professional under section 118, as the case may be.

14. The aforesaid provision contains following essence:

- a. Secured creditor shall have voting right qua secured debt only if it forfeits the right to enforce security interest;
- b. Secured creditor who chooses to retain its right to enforce security interest, will have to furnish an affidavit to claim voting right for unsecured part of debt, if any;
- c. If the said secured creditor does not have any unsecured debt, then it is not under an obligation to furnish any affidavit;

- d. Meaning thereby, the Secured creditor having not forfeited its right to enforce security interest, will have no voting right qua the secured part of debt; and
- e. Nonetheless, concurrence of the secured creditors to repayment plan is mandatory if the plan affects right of concerned secured creditor to enforce its security interest.

15. We see that the RP prepared a fresh list of creditors, with voting rights which is extracted herein below:

S. No.	Financial Creditor	Name of Company for which Guarantee given	Amount Claimed	Amount Admitted	% of total claim	Secured (S) or Unsecured (US)
1	Asset Care and Reconstruction Enterprises Limited (Acre) (Acting in its capacity as trustee of ACRE-30-Trust)	Multiwal Pulp & Boards Mills Pvt Ltd	2,08,75,23,170	2,08,75,23,170	41.49	US
2	State Bank of India	Multiwal Pulp & Boards Mills Pvt Ltd	1,66,97,43,184	1,66,97,43,184	33.18	S
3	Standard Chartered Bank	Multiwal Pulp & Boards Mills Pvt Ltd	59,45,14,398	59,45,14,398	11.81	US
4	Punjab National Bank (Haldwani)	Multiwal Pulp & Boards Mills Pvt Ltd S.S. Metal Recycling Industries Shree Prabhu Sharan Ispat Udhyog Pvt Ltd.	263171466	263171466	5.23	S
5	Punjab National Bank (Moradabad)	Multiwal Duplex Pvt Ltd	41,69,64,428	41,69,64,428	8.29	S
	TOTAL		5031916646	5031916646	100	

16. We further see that after series of deliberations vide multiple meetings of the creditors, revised repayment plan was finally put to e-vote in 7th meeting of creditors dated 28.11.2022 and e-voting ended on 02.12.2022 when 8th meeting of creditors was held and e-voting results were disclosed. In 7th meeting the above-mentioned voting rights were also disclosed, however State Bank of India did not vote on the

repayment plan. A Repayment plan put forth in the 7th meeting is as extracted herein below:

S. No.	Name of the Creditor	Amount Proposed (Rs. In Lacs)
1.	State Bank of India	250
2.	HDFC Bank	140
3.	Punjab National Bank (PNB) Haldwani	205
4.	Punjab National Bank (PNB) Moradabad	100
5.	Union Bank of India	220
6.	Asset Care and Reconstruction Enterprises Limited (ACRE)	40
7.	Standard Chartered Bank	12
8.	SREI Infrastructure Finance Limited	-
	Total	967

The aforesaid funds are proposed to be sourced from:

III. Source of Funds :-

Particular	Source of Funds
Provision for Fee to Resolution Professional	From Relative and family Friends
Provision for Other Expense related or incidental to resolution process	From Relative and family Friends
Funds Proposed to Creditors	From sale of above properties already mortgaged as collateral securities with the lenders in the manner stated above subject to the terms and conditions given below along with some help from friends and family and existing liquid assets.

17. As per the voting results disclosed in the 8th meeting, the aforesaid plan has received 100% votes in favour. Further, we note that the plan clearly proposes the sale of properties under charge of the Union Bank of India and HDFC Bank who have not forfeited its right to enforce security interest. Accordingly, the RP sent an email dated 03.12.2022 to the Union Bank of India, HDFC Bank and SBI seeking concurrence to the plan in terms of section 110(5) and the Union Bank of India vide email dated 05.12.2022, HDFC Bank vide email dated 21.12.2022, SBI vide email dated 21.12.2022 in response refused the concurrence.

18. At this stage, we are inclined to highlight section 110(5) of the IBC:

110. Rights of secured creditors in relation to repayment plan. –

...

(5) The concurrence of the secured creditor shall be obtained if he does not participate in the voting on repayment plan but provision of the repayment plan affects his right to enforce security.

Also section 111 of the IBC, which reads as follows:

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.

19. Now to answer whether the plan having received requisite vote under section 111 will be considered to be have been approved even if the same has not received concurrence from secured creditors whose right to enforce security interest are affected under repayment plan. We find that the secured creditors SBI, HDFC and Union Bank of India account for more than 55% of the admitted claims of the financial creditor. Further, the repayment plan envisages payment to the financial creditors *“from sale of above properties already mortgaged as collateral securities with the lenders in the manner stated above subject to the terms and conditions given below along with some help from friends and family and existing liquid assets”*. As the secured financial creditors have refused concurrence to the Plan, therefore, we hold that the Plan cannot be considered approved.

20. We at this stage also do not find any reason for giving any additional time to the Personal Guarantor, more so when there is no proposal of the enhancement of the plan amount and there is no other alternative provided for us to consider in this matter where the personal guarantor can be asked to revise the plan or for the COC to reconsider.

21. Further, Mr. Abhishek Anand, Ld. Counsel for the RP appeared before us in a hearing held on 03.06.2024 and submitted in response to our query that there is an inadvertent error in the prayer made in this Application i.e., order may be passed under section 114 read with

section 115 and not under 114(2) which deals with the approval of the Plan.

22. Accordingly, we accept the report of the RP and **reject the repayment Plan** submitted by the Personal Guarantor.

23. The Creditors or debtor are entitled to proceed thereafter in accordance with the provisions of the Code.

24. Parties are at liberty to proceed in accordance with the provisions of the Code. A copy of this order may be served by the RP upon the Debtor and all the Creditors as well as upon the IBBI.

25. **CP-(IB)-951(PB)/2020 stands disposed of in terms of the above order and all associated applications stand closed.**

26. **The RP stands discharged and he is entitled to claim IRP costs from the Stakeholders.**

27. File be consigned to record storage (current).

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-
(AVINASH KUMAR SRIVASTAVA)
MEMBER (TECHNICAL)