

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

Company Petition (IB) No. – 948(PB)/2020

Under Section 114 of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

State Bank of India ... **Applicant**
Vs

Sameer Ahmad Khan ... **Respondent**

Order under Section 114 of Insolvency & Bankruptcy Code, 2016

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-6062/2022

1. This is a report in the form of an Application was filed by the RP under Section 112 and 113 of the Insolvency and Bankruptcy Code 2016 (IBC) on 12.12.2022 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:

It is therefore, humbly prayed, for the reasons as aforementioned:

- 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 rejection of the repayment plan by the Creditors of the Personal Guarantor i.e. Sameer Ahmad Khan;

c. *Pass such other or further order / order(s) as many be deemed fit and proper in the facts and circumstances of the instant application.*

2. During the course of hearing and on perusal of records it was pointed by this Adjudicating Authority that one of the Creditors of the Personal Guarantor, Union Bank of India although is not a secured creditor and thus ought to have been given voting rights to vote on the Repayment Plan, however, has not been allowed to vote.

3. To the aforesaid concern, RP has furnished clarification dated 11.05.2024, wherein it has fairly conceded to this error at the end of RP in following terms:

5. *I say that the Union Bank of India filed its claim before the Deponent i.e., Resolution Professional in the form of FORM-B dated 27.04.2022 in accordance with the Regulation 7(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. Copy of FORM B dated 27.04.2022 filed by the Union Bank of India is annexed herewith and marked as ANNEXURE A - 2.*

6. *I say that upon the meticulous perusal of the claim form submitted by the Union Bank of India, it was noted by the Deponent that under the column 13 of the form wherein options provided pertaining to forfeiture of the right to enforce security during the period of the repayment plan were provided. The Union Bank of India mentioned therein that they have to seek permission from the competent authority if they wish to relinquish their interest in accordance with Section 110 of the Code or not. The same is reproduced herein below:*

13.	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the Code	<input type="radio"/> I agree to forfeit my right to enforce my security [<i>insert description</i>] during the period of the payment plan. <input type="radio"/> I do not agree to forfeit my right to enforce my security [<i>insert description</i>] during the period of the payment plan. <input type="radio"/> WE HAVE TO TAKE PERMISSION FROM COMPETENT AUTHORITY, WE HAVE ALREADY FORWARDED TO THE COMPETENT AUTHORITY.
-----	--	--

7. *I state that in pursuance to this Union Bank of India sent an email dated 20.10.2022 to the Deponent, wherein the Union of India (sic, 'Union of India' to be read as 'Union Bank of India') apprised the Deponent that they do not wish to relinquish its security interest against the guarantors of M/s Multiwal Pulp & Board Mills Pvt Ltd and M/s Multiwal Duplex Pvt Ltd. in favour of the Deponent in accordance with the Section 110(2) of the*

Code, the relevant extract of the email is reproduced herein below for the convivence (sic, 'convivence' to be read as 'convenience') of this Hon'ble Adjudicating Authority:

*"As per the communication received from the competent authority we hereby inform you that **Union Bank of India will not relinquish his Security Interest in favor of RP in the matter of personal Insolvency against the Guarantors of M/S Multiwal Pulp & Board Mills Pvt Ltd & M/S Multiwal Duplex Pvt Ltd.**"*

8. Further, I say that upon receiving the aforementioned email, which was sent generically to all guarantors, the Deponent, acting as the Resolution Professional, inadvertently classified Union Bank of India as a secured financial creditor for Mr. Nazuk Jahan (sic, 'Nazuk Jahan' is to be read as 'Sameer Ahmad Khan'), the personal guarantor in the captioned matter. This classification was made in good faith, as the Deponent believed it to be accurate based on the information provided in the email. However, upon further review, it became evident that this was an inadvertent and bona fide mistake made by the Deponent, ergo the Union Bank of India was inadvertently treated as a secured creditor qua the personal guarantor in the captioned matter.

...

11. I say that it is humbly prayed before this Hon'ble Adjudicating Authority that the aforementioned classification was an inadvertent and bona fide mistake made by the Deponent and the same was also put for discussion before the creditors as stated in the preceding paragraphs. In view of the same, this Hon'ble Adjudicating Authority may sent the repayment plan back for voting in accordance with section 110 of the Code before the Creditors of the personal guarantor.

4. In view of the error conceded by the RP and prayer as sought we hereby send the Repayment Plan back for fresh voting by all the Creditors, entitled to vote as per provisions of the law.

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

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