

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item Nos. 204, 205 & 206
IA-5097/2023 in IB-111/ND/2022
IA-5099/2023 in IB-113/ND/2022
IA- 5307/2023 in IB-114/ND/2022

IN THE MATTER OF in IB- 111/ND/2022:

State Bank of India (through RP) ... Applicant/Petitioner

Versus

Sh. Krishan Kumar Basia ... Respondent

IN THE MATTER OF in IB-113/ND/2022:

State Bank of India (through RP) ... Applicant/Petitioner

Versus

Sh. Ankit Kumar Gupta ... Respondent

IN THE MATTER OF in IB-114/ND/2022:

State Bank of India (through RP) ... Applicant/Petitioner

Versus

Sh. Dinesh Kumar Basia ... Respondent

Under Section: 95(1) of IBC, 2016 (CIRP)

Order delivered on 08.04.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant/RP : Adv. Abhishek Anand, Adv. Shikhar Tiwari

For the J & K Bank : Adv. Syed Arsalan, Adv. Prateek Khaitan, Adv. Chatanya Sharma, Adv. Shitij Chakravarty

For the CBOI : Adv. I.P.S. Oberoi, Adv. R.K. Srivastava

For the Respondent : Adv. Satish Rai, Adv. Gaurav Ray

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-5097/2023 in IB-111/ND/2022, IA-5099/2023 in IB-113/ND/2022 & IA-

5307/2023 in IB-114/ND/2022:- The Respondents in these applications stood

as Guarantors in respect of the same financial facility/transaction extended by the Creditors to the Borrowers. In the wake, the reports filed by the RP under Section 106 of IBC, 2016 regarding the separate Insolvency Resolution Processes ordered to be initiated qua the Respondents are ***pari-materia***. In the wake, these applications filed under Section 106 of IBC, 2016 are taken up for disposal in terms of the common order.

2. In the applications, preferred to bring on record the report under Section 106, the RP has categorically averred that the Respondents (Personal Guarantors) have not prepared and submitted any Resolution Plan. Paras 10 to 15 of the IA-111/ND/2022/report preferred by the RP reads thus:

10. It is further submitted that the Resolution Professional had made several communications to the Personal Guarantor for the submissions of the Repayment Plan however, no repayment plan was received by the Resolution Professional. That thereafter the Resolution Professional was compelled to file an application bearing I.A. No. 2990 of 2023 under Regulation 22 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate

Debtors) Regulations, 2019 before this Hon'ble Adjudicating Authority seeking the following reliefs:

- a. Allow the present application;*
- b. Direct the Respondent, to co-operate and give sufficient information including but not limited to the extent as sought by the Applicant by way of emails dated 30.03.2023 and 20.04.2023;*
- c. Consequentially issue appropriate directions to the Respondent to cooperate and assist the Applicant for the preparation of the Statement of Affairs and for the submission of the Repayment Plan;*
- d. Pass such other or further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*

11. That the application bearing I.A. No. 2990 of 2023 was listed before this Hon'ble Adjudicating Authority on 25.07.2023 wherein, the counsel for the Personal Guarantor made a submission to extend co-operation to the Resolution Professional and the same was recorded in the order. That the relevant extract of the Order dated 25.07.2023 is reproduced hereunder:

"Mr. Satish Rai, Ld. Counsel appearing for the Personal Guarantor submitted that the Personal Guarantor would extend all desired/required cooperation to the RP. In view of the statement made by Mr. Satish Rai, Ld. Counsel for the Personal Guarantor, the application is disposed of."

Copy of Order dated 25.07.2023 passed by this Hon'ble Adjudicating Authority is annexed herewith and marked as ANNEXURE A-6.

12. That pursuant thereto the Resolution Professional vide email dated 12.08.2023 sought for the pending details for the Repayment Plan for the Creditors however, the Resolution Professional has not received any Repayment Plan till date. Copy of email

dated 12.08.2023 sent by the Resolution Professional to the Personal Guarantor is annexed herewith and marked as ANNEXURE A-7.

13. That pursuant thereto the Resolution Professional, on receipt of request from creditors having more than 33% of voting share in accordance with Regulation 11 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 convened the 1st meeting with the Creditors of the Personal Guarantor of the Corporate Debtor on 24.08.2023. That the Resolution Professional apprised the Creditors of the Personal Guarantor regarding the non-submission of the Repayment Plan and inability of the Personal Guarantor to resolve the debt. That after through discussions and deliberations the Resolution Professional was advised to file report under Section 106 of the Code, reporting the non-submission of the Repayment Plan. That the relevant extract of the 1st meeting with the Creditors is reproduced hereunder:

"In view of the aforesaid, discussions were held on the way forward, whereby it was advised that RP may file his report under Section 106 of the Code, reporting non-submission of repayment plan and inability of the Personal Guarantor to resolve the debt before the Hon'ble NCLT and accordingly an application may also be filed to seek appropriate directions from Hon'ble NCLT to initiate the bankruptcy process of the personal guarantor. Upon adjudication of the same, the bankruptcy application will be filed in accordance with the provisions of the Code."

Copy of minutes of the 1st meeting with the Creditors of the Personal Guarantor convened by the Resolution Professional on 24.08.2023 is annexed herewith and marked as ANNEXURE A-8.

14. Thereafter the Applicant received an email on 05.09.2023, from the counsel of the personal guarantor enclosing the letter dated 25.08.2023 from the personal guarantor, again confirming the inability of the personal guarantor to resolve the debt, which were in the capacity of a guarantor and not disbursed personally to Mr. Krishan Basia.

Copy of the email received on 05.09.2023, along with letter dated 25.08.2023 is annexed herewith and marked as **ANNEXURE A-9 (COLLY)**

COMPLIANCE IN TERMS OF PROVISIONS OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

PROVISIONS	COMPLIANCES
<p>Section 102.</p> <p>Public notice and claims from creditors.</p> <p>(1) The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty- one days of such issue.</p>	<p>(1) In compliance of order dated 21.02.2023 read with Order dated 20.03.2023(received on 29.03.2023), the Resolution Professional issued a public notice dated 30.03.2023 in Business Standard (English) & Rashtriya Sahara (Hindi) containing necessary information in terms of Section 102(2) of the Code inviting claims from the creditors for registering their claim with the Resolution Professional in terms of Section 103 of</p>
<p>(2) The notice under sub-section (1) shall include-</p> <p>(a) details of the order admitting the application.</p> <p>(b) particulars of the resolution professional with whom the claims are to be registered; and</p> <p>(c) the last date for submission of claims.</p>	<p>the Code.</p> <p>(2) Notice as published by the RP included the following: -</p> <p>(a) Details of order dated 21.02.2023 along with the details of the Company Petition has been duly included.</p> <p>(b) Particulars of the RP i.e., Mr. Chanchal Dua as appointed by this Hon'ble Adjudicating Authority has been mentioned in the Notice.</p>

<p>(3) The notice shall be -</p> <p>(a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides.</p> <p>(b) affixed in the premises of the Adjudicating Authority; and</p>	<p>(c) Last date has duly been included for submission of claims as 20.04.2023.</p> <p>(a) Notice has been published in Business Standard (English) & Rashtriya Sahara (Hindi) and the same is in circulation in Delhi NCR, where the Guarantor resides.</p> <p>(b) The Resolution Professional vide email dated 01.04.2023 informed the Adjudicating Authority through the Court Officer about the publication and also email copies of the Publications for affixation in the premises of the Adjudicating Authority. Copy of Email dated 01.04.2023 is annexed herewith and marked as <u>ANNEXURE A-10.</u></p>
<p>(c) placed on the website of the Adjudicating Authority.</p>	<p>(c) The Resolution Professional vide email dated 01.04.2023 informed the Adjudicating Authority through the Court Officer about the publication and also emailed copies of the Publications.</p>
<p>Section 104.</p> <p>Preparation of list of creditors. –</p> <p>(1) The resolution professional shall prepare a list of creditors on the basis of –</p> <p>(a) the information disclosed in the</p>	<p>(a) The Resolution Professional on receipt of the claims from the creditors has duly prepared a list</p>

<p>application filed by the debtor under section 94 or 95, as the case may be;</p> <p>(b) claims received by the resolution professional under section 102.</p> <p>(2) The resolution professional shall prepare the list mentioned in sub-section (1) within thirty days from the date of the notice.</p>	<p>within thirty days from the date of notice in terms of Section 104 of the Code.</p> <p>(b) List of claims received by the Resolution Professional has been placed on record along with the present report.</p> <p>(2) The thirty days from the date of Notice was 30.04.2023 and accordingly, the Resolution Professional prepared the List mentioned in sub-section(1) on 29.04.2023 i.e. within 30 days as prescribed.</p>
<p>105. Repayment plan. -</p> <p>(1) The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to</p>	<p>The Personal Guarantor was not able to submit the Repayment Plan. Moreover, the Counsel of the Personal Guarantor expressed the incapability of the Personal Guarantor, to offer any amount vis a vis repayment plan.</p>
<p>the creditors for restructuring of his debts or affairs.</p> <p>(2) The repayment plan may authorise or require the resolution professional to –</p> <p>(a) carry on the debtor's business or trade on his behalf or in his name; or</p> <p>(b) realise the assets of the debtor; or</p> <p>(c) administer or dispose of any funds of the debtor.</p>	

<p>(3) The repayment plan shall include the following, namely: -</p> <p>(a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;</p> <p>(b) provision for payment of fee to the resolution professional;</p> <p>(c) such other matters as may be specified.</p>	
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COMPLIANCE IN TERMS OF IBBI (INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) REGULATIONS, 2019

REGULATION	COMPLIANCES
<p>REGULATION 9(2)(e) Resolution Professional shall file a certified copy of the list of creditors with the Adjudicating Authority along with the repayment plan</p>	<p>The Resolution Professional has annexed a certified copy of List of Creditors in compliance of Regulation 9(2)(c) along with however, no repayment plan has been received from the Personal Guarantor.</p>
<p>REGULATION 10(1) READ WITH SECTION 107(3)(B) OF THE CODE Resolution professional prepare a Statement of Affairs of the guarantor for the purposes of</p>	<p>That in terms of Section 107(3)(b) of the Code read with Regulation 10(1), Resolution professional has also prepared a Statement of Affairs of the personal Guarantor/ Respondent, on the basis of limited information received</p>

clause (b) of sub-section(3) of Section 107	
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15. That in view of the above-mentioned facts and circumstances it is submitted that the Resolution Professional is filing report under Section 106 of the Code, reporting non-submission of the Repayment Plan and inability of the Personal Guarantor to resolve the debt, before this Hon'ble Adjudicating.

3. In terms of the proviso to Section 114(1) of IBC, 2016, it has been provided that where the 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 of IBC, 2016.

4. Mr. Satish Rai, Ld. Counsel appearing for the Personal Guarantor submitted that in the present case the meeting of the creditors has been summoned, thus the order in terms of the proviso to Section 114(1) of IBC, 2016 may not be passed.

5. It is also his submission that not only the Meeting of the Creditors could be summoned by the RP, but the same had been summoned without the leave of this Tribunal.

6. As far as the arguments put forth by Mr. Satish Rai are concerned, the same are self-contradictory. On the one hand, it is his argument that when the meeting of the Creditors was in fact summoned, the order in terms of the proviso to Section 114(1) may not be passed, on the other hand he also submitted that the meeting was called without the leave of the Court, thus the same was void. If the meeting called was not as per statutory provision, the same was void and non-est and a meeting which is void and non-est may not be treated as a meeting. Nevertheless, practically, the meeting was called. Thus we need to examine that when the proviso to Section 106(2) of IBC, 2016 provide that where the Resolution Professional recommend that a meeting of the Creditors is not required to be summoned, the reasons for the same shall

be provided, the proviso to Section 114(1) provides that where a meeting of Creditors is not summoned the Adjudicating Authority may pass an order on the basis of the Report prepared by Resolution Professional under Section 106.

7. May be in terms of the provisions of Section 106(1), the Resolution Professional having liability to submit the repayment plan under Section 105 along with his report on such plan to the Adjudicating Authority within a period of 21 days from the last of submission of claim under Section 102 summoned the meeting of the Creditors. However, in such cases, where the Personal Guarantors do not submit any repayment plan, it cannot be viewed that they are on better footing than such Personal Guarantors, whose repayment plan are rejected by the Creditors in the meeting, held under Section 110 and 111 of IBC, 2016. The ramification of non-submission of repayment plan by Personal Guarantors has to be the same as that of the rejection of such plan. It is in this wake, only that the proviso under Section 114(1) of IBC, 2016 has been incorporated in the Code. May be, the proviso to Section 114(1) of the Code needed to be more specific and clear and instead of expression, “where the meeting of Creditors is not summoned” the expression, “where no repayment plan is submitted” could be used. In any case, in terms of the Principal of statutory interpretation viz. the *noscitur a sociis*, the expression used in the statute need to be understood with reference to the intent and meaning of the expression used in the proximate clauses of the statute. The whole intent and purpose of proviso to Section 114(1) of IBC, 2016 is that not only in such cases alone, where the Creditors in their meeting approve or reject the plan, but also in such cases where no meeting of Creditors held, in the backdrop of the prevalent facts, this Tribunal is expected to pass the order regarding non existence/submission of repayment plan and consequence thereof.

8. In the wake, as the Personal Guarantors have not submitted any repayment plan, the consequences in terms of the provisions of Section 115(2) and 121 of IBC, 2016 would follow.

10. Thus, these applications are disposed of, with the direction that the Creditors would be entitled to proceed in accordance with the provisions of Section 115(2) and read with Section 121 of IBC, 2016. At this stage, Mr. Satish Rai, Ld. Counsel appearing for the Personal Guarantor submitted that even debtor is also entitled to institute Bankruptcy proceedings. As per our understanding, the provision in statute book has been incorporated, because under Section 94 of IBC, 2016, even the Personal Guarantor can move an application for initiation of IRP. Nevertheless, if as per the stand taken by Mr. Satish Rai, the Personal Guarantor want to file the proceedings of Bankruptcy, it would be open to them to do so. **The applications stand disposed of.**

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

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

Satya Prakash/Gaurav