

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

**Item No. 206**  
**IB-134/2021**  
**IA-3385/2023**

**IN THE MATTER OF:**  
**Smt. Sita Devi**

... **Applicant/Petitioner**

**Under Section: 94(1) of IBC, 2016**

**Order delivered on 31.01.2024**

**CORAM:**  
**SH. ASHOK KUMAR BHARDWAJ**  
**HON'BLE MEMBER (J)**

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

**PRESENT:**

**For the Applicant** : Adv. Anoop Prakash Awasthi,  
Adv Karan Gandhi and Adv Shivam Gautam

**For the Respondent** :

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

**IA-3385/2023:** As can be gathered from the contents of the application, Ms. Sita Devi hereinafter referred to as a debtor preferred an application under Section 94 of IBC 2016 read with Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor Corporate Debtor Rules) 2019. For initiation of Insolvency Resolution Process qua herself. In terms of the order dated 30.05.2022 passed by this Adjudicating Authority in the aforementioned application i.e. (IB)-134/ND/2021, the application was admitted and the IRP was ordered to be commenced qua the personal guarantor. The relevant excerpt of the order reads thus:-

On perusal of the aforesaid Sale Notice dated 10.11.2020, we observe that the property of the personal guarantor herein appears at serial No. 2 & 3 under the heading "Description of Immovable Property" which demonstrate that guarantee was invoked before filing of the present application. Therefore, we are of the considered view that the Resolution Professional has rightly recommended admission of the present application under Section 100 of the IBC, 2016.

Accordingly, we hereby **ADMIT** the present application filed by the Personal Guarantor under Section 100 of the IBC, 2016.

**The Resolution Professional is directed to act as per the provisions contained under Section 100 (2) of the IBC 2016.**

The moratorium in terms of Section 101 of the IBC, 2016 shall commence with immediate effect in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

Further, in terms of Section 101 (2) of the IBC, During the moratorium period-

- (a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
- (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
- (c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein; .
- (d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

The notice under Section 102 of the IBC, 2016 is directed to be issued within 7 days inviting claims from the all creditors within 21 days. Notice shall be in terms of Section 102(3) of the IBC, 2016.

Registry is directed to serve the copy of this order along with the Report of the RP and the copy of the application in terms of Section 100(3) of the IBC.

List main matter on 09.06.2022.

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According to the Applicant, in compliance of the aforementioned order he discharged the function incumbent upon him in terms of the extant provisions of the Code and relevant Regulation. In para 5 of the application, the Applicant has averred that in the 3<sup>rd</sup> meeting of the CoC, it was resolved with 100% vote

share that the creditors are not willing to consider the repayment plan given by the representative of the personal guarantor. Para 5 of the application reads thus:-

*“5. That thereafter the Applicant called the third meeting of Committee of Creditors of Mrs. Sita Devi which was attended by 100% of creditors and the Representative of Personal Guarantor wherein the Committee of Creditors inter alia agreed that they are not willing to consider the Repayment plan given by Representative of the Personal Guarantor, hence directed the Applicant to file this present application and proceed with bankruptcy of the Personal Guarantor (Mrs. Sita Devi) under Chapter IV of Insolvency and Bankruptcy Code, 2016. A copy of minutes of third meeting of Committee of Creditors is annexed as Annexure-3.”*

The Applicant has also placed on record the report of the meeting of the CoC on repayment of plan. The report reads thus:-

*The third meeting of committee of creditors in the matter of Mrs. Sita Devi (Personal Guarantor of debts of M/s Mohan Gems and Jewels Private Limited & Delhi Diamonds Private Limited) held on Thursday, 06.04.2023 at 11:30 AM at the office of Resolution Professional at 9988/B-1, Sarai Rohilla, New Rohtak Road, New Delhi-11005 through virtual mode.*

*That in accordance in provisions of Section 112 of Insolvency and Bankruptcy Code, 2016, the Resolution Professional has to prepare a report in the meeting of the creditors on repayment plan.*

*Accordingly, the undersigned being appointed to act as Resolution Professional in the matter of Mrs. Devi (Personal Guarantor of debts of M/s Mohan Gems and Jewels Private Limited & Delhi Diamonds Private Limited) has prepared present report.*

*The contents of the report are as follows:*

Provisions	Particulars
<b>Section 112 (2) (a)</b> Whether the repayment plan was approved or rejected and if approved, the list the modification, if any	The Committee of Creditors in its third meeting reconfirmed the rejection upon the Repayment Plan done in the second meeting.
<b>Section 112 (2) (b)</b> The Resolutions which were proposed at the meeting and the decision on such resolutions	The resolution and decision as taken in the second meeting of creditors were reaffirmed even after the revised plan. was tabled and the decisions taken earlier are as follows: <u>Resolution passed by the creditors</u> 1. Note on the Hon'ble NCLT order dated 18.08.2023 and appointment of Mr. Anil Kumar Gupta as Resolution Professional

	<p>2. Note on the current status of the proceedings including updation of claims, if any, and the assets of the personal guarantor.</p> <p><u>Resolution on which COC discussed &amp; vote</u></p> <p>3. To discuss revised Repayment plan, seek COC View on completion of process. Decision: Rejected</p> <p>4. To discuss the fee and expenses incurred by outgoing Resolution Professional. Decision: Abstain</p> <p>5. To consider the fee of the Resolution Professional Decision: Approved</p> <p>6. To consider shorter notice for convening the meeting of COC. Decision: Approved</p>												
<b>Section 112 (2) (c)</b> List of the creditors who were present or represented at the meeting, and the voting records of each creditor for all meetings of the creditors	<p>A list of the creditors who were present or represented at the meeting, and the voting records of each creditor for all meetings of the creditors are as follow:</p> <table border="1"> <thead> <tr> <th>Name of Creditor</th> <th>Voting %</th> <th></th> </tr> </thead> <tbody> <tr> <td>Bank of India</td> <td>52%</td> <td></td> </tr> <tr> <td>Union Bank of India</td> <td>25%</td> <td></td> </tr> <tr> <td>Bank of Baroda</td> <td>9%</td> <td></td> </tr> </tbody> </table>	Name of Creditor	Voting %		Bank of India	52%		Union Bank of India	25%		Bank of Baroda	9%	
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	Kalpatri ARC	14%	
	TOTAL	100%	
<b>Section 112 (2) (d)</b> Such other information as the resolution professional thinks appropriate to make known to the Adjudicating Authority	NA		

This present report shall be submitted to the Hon'ble Adjudicating Authority in accordance with the relevant provisions of law.



Anil Kumar Gupta  
Resolution Professional in the matter of  
Mrs. Sita Devi

With reference to the report of the creditors, the Applicant has espoused that as the repayment of plan is not acceptable by the creditors, the necessary orders in terms of the provisions of Section 114 may be passed.

As can be seen from the provisions of Section 114 of IBC 2016, the Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of meeting of creditors submitted by the Resolution Professional under Section 112. In such cases, where the Adjudicating Authority approve the repayment plan, it may issue direction for implementation of the same. In the present case, the CoC has nixed the repayment plan. In terms of the provisions of Section 114(1) of the IBC 2016, the order of the Adjudicating Authority need to be based on the report of the meeting of creditors submitted by the Resolution Professional. Section 114(1) of IBC 2016 reads thus:-

*“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.”*

We do not find any reason, logic or justification, not to accept the report of the CoC. The Ld. Counsel appearing for the personal guarantor also fairly submitted that once the repayment plan offered by the personal guarantor is not accepted by the CoC, he has nothing to say in the matter. In the wake, the report of the CoC rejecting the repayment plan as approved. It would be open to the creditors to resort to the procedure in terms of Chapter-IV of IBC 2016 read with Section 115(2) thereof. **The application stands disposed of. No cost.**

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

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