NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

5. IA/2658/2022 IN C.P. (IB)/494(MB)2021

IN THE MATTER OF

IDBI Trusteeship Services Limited
VS
Atul S Bharani

U/s 95 (1) of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 18.11.2026

CORAM:
SH. NILESH SHARMA
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:
For the Petitioner - Adv. Syed Afridi
For the /RP: - Adv. Neha Hajare,
For the Respondent: -

ORDER

IA/2658/2022

The above IA/2658/2022 is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
NILESH SHARMA
Member (Judicial)

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

//Sunil (PS)//

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, V

IA (IBC) No. 2658 OF 2022
Order under Section 114 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Mr. Hemant Mehta

Having its office at:

D – 613/614, Neelkanth Business Park, Nathani Road, Opp. Railway Station, Vidyavihar West, Mumbai - 400086

… Applicant/Resolution Professional

IN THE ORIGINAL MATTER OF:

CP (IB) No. 494 OF 2021

IDBI Trusteeship Services Limited

… Creditor/ Petitioner

Versus

Mr. Atul S. Bharani

…Personal Guarantor /Respondent

Order Delivered on: 18.11.2026

Coram:

Sh. Nilesh Sharma
Member (Judicial)

Sh. Charanjeet Singh Gulati
Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: - Appeared, but not marked presence.

For the Respondent: -

(PER: BENCH)

IA (IBC) NO. 2658 OF 2022

1. The Present Application has been filed on 26.08.2022 by Mr. Hemant Mehta, Resolution Professional of the Personal Guarantor, Mr. Atul S. Bharani ("the Applicant") under Section 112 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code"), and Regulation 19 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ("PG Regulations") and Rule 11 of the National Company Law Tribunal Rules, 2016 ("Rules"), seeking the following prayers:
    a. *To take on record the Report under Section 112 of the Insolvency and Bankruptcy Code, 2016 and pass appropriate orders.*
    b. *Any other order or direction that this Hon'ble Tribunal may deem fit and proper.*

Brief Facts of the Case and Submission of the Applicant

2. The present application arises from proceedings initiated by the Financial Creditor, IDBI Trusteeship Services Limited, under Section 95(1) of the Code, seeking initiation of the Insolvency Resolution Process against Mr. Atul S. Bharani, the Personal Guarantor of Sunshine Housing and Infrastructure Private Limited.

3. This Tribunal, vide order dated 30.08.2021, appointed Mr. Shrikant Madanlal Zawar as the Resolution Professional to submit a report under Section 99 of the Code. Subsequently, vide order dated 07.09.2021 passed in I.A. No 1951 of 2021, the Applicant was appointed as the Resolution Professional.

4. Upon consideration of the report submitted by the Resolution Professional on 27.09.2021, this Tribunal vide order dated 27.04.2022 admitted the petition under Section 100 of the Code and initiated the Insolvency Resolution Process against the Personal Guarantor.

5. The Applicant, in compliance with Section 102 of the Code, made a public announcement on 06.05.2022 in the Free Press Journal (English), Navshakti (Marathi), and Mid-day (Gujrati), calling upon the creditors to file their claims. The last day for submission of claims was 27.05.2022.

6. The Applicant submits that the Personal Guarantor did not furnish the documents and information required for preparing the statement of affairs. In view of the non-cooperation of the Personal Guarantor in furnishing the information, a non-cooperation application was initiated against him via I.A. No. 1619 of 2022.

7. By an email dated 06.06.2022, the Applicant called upon the Personal Guarantor to submit a repayment plan in terms of Section 105 of the Code. Notice of the 1st meeting of creditors was sent on 27.06.2022 and the Applicant's report under Section 106 was filed on 30.06.2022.

8. The Applicant submits that an email was received from the Personal Guarantor on 12.07.2022, which he claimed it to be a Repayment Plan. However, the Applicant was of the view that the said document did not fulfill the statutory requirements of Repayment Plan as per the Regulations, primarily because it did not propose any repayment from the personal assets of the Personal Guarantor but rather relied on successful execution of projects of the Corporate Debtors.

9. The 1st Meeting of the creditors was held on 12.07.2022. The purported Repayment Plan submitted by the Personal Guarantor was placed before the creditors consideration and was put to vote. The voting results reflected that the resolution to approve the Repayment Plan was rejected with 99.98% of the creditors voting against it.

Sr. No	**Voting Item**	**Voting Required**	**Voting Achieved**	**Decision**
1.	To approve fees and expenses of Rs. 9,04,119 (Nine Lakh Four Thousand One Hundred and Nineteen), excluding taxes wherever applicable, incurred by the Resolution Professional as resolution process cost and the same shall be reimbursed by the applicant and borne by the Personal Guarantor as a part of the Repayment Plan (if any). If there is no repayment plan proposed by the Personal Guarantor, then the entire consideration shall be borne by the Applicants namely IDBI Trusteeship & S.N. Damani Developers LLP in proportion of their claim amount. (As discussed in the meeting).	51%	99.90% (Agree)	Approved
2.	To approve the repayment plan as claimed by Mr. Atul Bharani via	51%	99.98% (Disagree)	Not Approved

	email (which does not appear to be a repayment plan from personal assets of debtor as discussed in the meeting).			
3.	To approve the application to be filed with Hon'ble NCLT to seek direction on future course of action if no suitable information and repayment plan is received within a week from date meeting.	51%	99.98% (Agree)	Approved
4.	To call a meeting of creditors by serving a shorter notice of 48 hours.	51%	99.90% (Agree)	Approved

10. Thereafter, a 2nd Meeting of Creditors was convened on 18.08.2022, wherein the creditors were apprised of the rejection of the plan. The creditors resolved and approved the filing of an application seeking directions from this Tribunal.

Sr. No	**Voting Item**	**Voting Required**	**Voting Achieved**	**Decision**
1.	The Legal Fees and Expenses of Rs. 60,000 (Sixty Thousand), excluding taxes, wherever applicable, incurred/ to be incurred by the Resolution Professional (in addition to previously approved fees and expenses), be and is hereby approved as resolution process cost and shall be reimbursed by	51%	99.92% (Agree)	Approved

	the applicant and borne by the Personal Guarntor as a part of the Repayment Plan (if any). If there is no repayment plan proposed by Personal Guarantor, then the entire resolution process cost shall be borne by the major creditors namely IDBI Trusteeship Services Ltd, S.N. Damani Developers LLP and LIC Housing Finance Limited			
2.	To approve application to be filed under Section 114 of Insolvency and Bankruptcy Code, 2016 and further action to be taken under Section 116 along with any other action as suggested by creditors.	75%	99.98% (Agree)	Approved

11. The Applicant submits that the period of 120 days from the date of initiation of the personal insolvency process was expiring on 25.08.2022. Accordingly, the Applicant prepared the Report under Section 112 of the Code and filed the present application to place it on record, seeking appropriate directions in view of the absence of any approved repayment plan capable of implementation.

Affidavit in Reply of the Personal Guarantor

12. The Personal Guarantor has filed an affidavit in reply on 13.01.2023. The Personal Guarantor submits that the present application is defective and based on a false premise that he did not submit a Repayment Plan, whereas a valid plan was duly submitted via email dated 12.07.2022.

13. The Personal Guarantor states that there was no agenda for voting on Repayment plan. The Personal Guarantor alleges that the Applicant failed to provide copies of claims received from various creditors, as well as the legal opinions and past judgements relied upon by the Applicant while admitting disputed claims. The Personal Guarantor contends that in the absence of these documents, it was extremely difficult for him to provide the statement of Affairs and prepare a Repayment Plan.

14. The Personal Guarantor further submits that he attended all the meetings of the creditors through his authorized representative. However, the Applicant deliberately did not incorporate the objections and explanations given by the Personal Guarantor's representative in the minutes of the meeting of creditors and refused to share the sound recording of the meetings, thereby questioning the independence of the Applicant.

15. The Personal Guarantor has further averred that the Applicant, without filing a report under Section 106 of the Code as required, directly proceeded to file the Report under Section 112 of the Code, which is impermissible in law.

16. On these grounds the Personal Guarantor prays that the RP be directed to finalise a proper list of claims after addressing the dispute claims before and that the Report under Section 112 be rejected, and that the RP be directed to file a report under Section 106 of the Code.

Analysis and Findings

17. We have heard the Learned Counsel for the Applicant and perused the material available on record.

18. It is the case of the Applicant that the Repayment Plan submitted by the Personal Guarantor via email dated 12.07.2022 was placed before the Creditors in its meeting held on 12.07.2022, and the same was put to vote and rejected by 99.98% of the creditors, and that in the absence of any approved plan, the Report under Section 112 of the Code was prepared and filed before this Tribunal to bring the statutory process to its logical conclusion.

19. *Per contra*, it is the case of the Personal Guarantor that the Repayment Plan submitted by him was discarded by the Resolution Professional without a proper vote, that the Resolution Professional failed to share vital documents such as copies of claims and legal opinions which hindered his ability to propose an effective plan, and that the Resolution Professional bypassed the statutory mandate of filing a Report under Section 106 of the Code before proceeding under Section 112.

20. The primary contention of the Personal Guarantor is that the Repayment Plan was not properly put to vote by the Resolution Professional in the meeting of the creditors held on 12.07.2022. To address this contention, we must refer to the statutory mechanism for the approval of a repayment plan and report of meeting of creditors, which is governed by Section 111 and 112 of the Code. which are reproduced as under:

> *"**Section 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-fourths in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors."*

Section 112: Report of meeting of creditors on repayment plan

(1) The resolution professional shall prepare a report of the meeting of the creditors on repayment plan.

(2) The report under sub-section (1) shall contain-:

a) whether the repayment plan was approved or rejected and if approved, the list the modifications, if any;

b) the resolutions which were proposed at the meeting and the decision on such resolutions;

c) 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; and

d) such other information as the resolution professional thinks appropriate to make known to the Adjudicating Authority.

21. A plain reading of the aforesaid provision makes it clear that Section 111 of the Code prescribes a threshold for approval of a repayment plan, requiring more than three-fourths in value of the creditors present and voting to vote in favour of the plan. Section 112 requires the Resolution Professional to prepare and submit to the Adjudicating Authority a report of the meeting of creditors containing whether the repayment plan was approved or rejected.

22. In the present case, the record reveals that the email issued by the Personal Guarantor on 12.07.2022, which he claimed to be a Repayment Plan, was duly discussed in the 1st Meeting of Creditors held on 12.07.2022. It is submitted that the said email did not conform to the requirements as per the Regulation 17 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, still the resolution seeking approval of the said plan was put to vote.

23. As per the voting results placed on record, 99.98% of the creditors voted against the plan in the 1st meeting of creditors held on 12.07.2022. Thus, the plan clearly failed to secure the approval of more than three-fourths in value of the creditors present and voting, as mandated by Section 111 of the Code. Consequently, the Resolution Professional was left with no option but to submit the Report under Section 112 of the Code, reporting the rejection of the plan.

24. The Personal Guarantor further contends that the Applicant directly proceeded to file the Report under Section 112 of the Code without first filing a report under Section 106 of the Code, which is impermissible in law.

25. Upon perusal, we observe that the material on record shows that the Applicant had duly filed the Report under Section 106 of the Code on 30.06.2022. It is pertinent to note that this fact was specifically discussed and recorded in the minutes of the meeting of creditors held on 12.07.2022, wherein the Resolution Professional informed that a report under Section 106 of the Code had been filed and circulated. The relevant portion of the minutes of the meeting of creditors held on 12.07.2022 are as follows:

> ***RP informed that a report under section 106 is filed by him with the respective authorities and same was already mailed to all the Creditors****. As part of the progress in the Resolution Process, he explained that even after adequate reminders there was no revert from Mr. Bharani on data required from him and hence a Non-Cooperation petition is initiated against him with Hon'ble NCLT.*

Therefore, the contention that the Applicant bypassed Section 106 is factually incorrect and devoid of merit.

26. Further, the Personal Guarantor contends that the Applicant failed to provide copies of claims, legal opinions and past judgements relied upon for admitting disputed claims, thereby making it impossible for him to prepare a proper Statement of affairs and repayment plan. The Personal Guarantor also alleges that the audio recordings were withheld and his objections were not included in the minutes including his rebuttal, clarifying that he would not share information until the RP provided the details sought by him, was also not included in the minutes.

27. We have considered the grievances raised by the Personal Guarantor. As per Regulation 7 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, the Resolution Professional has verified all the claims and accordingly, prepared the list of creditors which was duly shared with the Personal Guarantor. If the Personal Guarantor had any grievance regarding the admission of disputed claims, including the non-provision of copies of the underlying claims, legal opinions or past judgments, he was at liberty to challenge the same by way of filing an IA at the appropriate time and not as a defense now. Such grievances, however, could not, in themselves, constitute a ground to stall the time-bound personal insolvency resolution process. Further, the allegations regarding the withholding of audio recordings and the non-incorporation of his objections and rebuttal in the minutes of meetings do not, by themselves, vitiate the voting process or invalidate the outcome thereof, whereby the repayment plan was rejected.

28. Accordingly, as the Repayment Plan has failed to secure the requisite approval of the creditors, the provisions of Section 114 of the Code are attracted. Section 114 of the Code provides that the Adjudicating Authority

shall by an order, approve or reject the Repayment Plan on the basis of the report of the meeting of creditors submitted by the Resolution Professional under Section 112 of the Code. The relevant provision is reproduced below:

> ***Section 114: Order of Adjudicating Authority on repayment plan.***
>
> ***(1) 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.*
>
> *(2) The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan.*
>
> *(3) Where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution professional to re-convene a meeting of the creditors for reconsidering the repayment plan.*
>
> ***(Emphasis Supplied)***

29. In the present case, the Resolution Professional, in its report submitted under Section 112 of the Code, has recorded that the creditors rejected the Repayment Plan in their meeting held on 12.07.2022. In view of facts of the case and the discussion hereinabove, the Repayment Plan submitted by the Personal Guarantor is hereby rejected under Section 114(1) of the Code.

30. The consequences of rejection of the Repayment Plan are governed by Section 115(2) of the Code, which entitles the debtor and the creditors to file an application for bankruptcy under Chapter IV of Part III of the Code. The relevant provision reads as follows:

Section 115: Effect of order of Adjudicating Authority on repayment plan-

(1) Where the Adjudicating Authority has approved the repayment plan under section 114, such repayment plan shall—

(a) take effect as if proposed by the debtor in the meeting; and

(b) be binding on creditors mentioned in the repayment plan and the debtor.

(2) ***Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.***

(3) A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196."

31. Thus, upon rejection of the repayment plan submitted by the Personal Guarantor, the statutory consequences contemplated under Chapter IV of Part III of the Code would follow. In terms of Section 121 thereof, an application for bankruptcy may be made by a creditor, either individually or jointly with other creditors, or by the debtor, before the Adjudicating Authority, subject to conditions prescribed therein

32. As the Report under Section 112 of the Code was taken on record vide order dated 12.07.2024, we pass the following orders:

ORDER

33. As the repayment plan submitted by the Personal Guarantor is rejected by the creditors, the consequence under Section 115(2) of the Code shall follow. Hence, the Personal Insolvency Resolution Process of the Personal Guarantor, **Mr. Atul S. Bharani**, stands **terminated**.

34. The Creditors of the Personal Guarantor and the debtor are entitled to initiate the bankruptcy proceedings in terms of the provisions of Section

115(2) of the Code read with Section 121(1)(b) of the Code under Chapter IV of Part III of the Code.

35. The moratorium commenced in terms of Section 101 of the Code in relation to all the debts and assets of the Personal Guarantor shall cease to have effect from the date of this order.

36. The Resolution Professional is discharged from the Insolvency Resolution Process of Personal Guarantor, **Mr. Atul S. Bharani.**

37. Let a copy of this order be provided to IBBI for the purpose of recording an entry in the register referred to in Section 196 if the Code. The RP shall also make copies of this order available to all the creditors and Personal Guarantor within one week from today.

38. With the above directions, the present application i.e. IA 2658 of 2022 is hereby **allowed** and **disposed** of.

Sd/-

NILESH SHARMA

Member (Judicial)

Sd/-

CHARANJEET SINGH GULATI

Member (Technical)

Smeet - LRA