

S.No.8

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
09-03-2023 AT 10:30 AM

IA (IBC) 12/2023 in CP(IB) 310/95/HDB/2021
u/s. 95 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Petitioner

VS

Smt. K Tara Bai & Vishwa Infrastructures and
Services Pvt Ltd

...Respondent

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (IBC) 12/2023

Orders pronounced, recorded vide separate sheets. In the result the repayment plan submitted by the Personal Guarantor is approved as per the terms and conditions mentioned therein.

Accordingly, IA (IBC) 12/2023 is disposed of.

SD

MEMBER (T)

SD

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH- I**

IA No. 12 of 2023

IN

CP(IB) No. 310/95/HDB/2021

IN THE MATTER OF

**STATE BANK OF INDIA VS SMT K. TARA BAI & M/S VISHWA
INFRASTRUCTURES AND SERVICES PRIVATE LIMITED**

Filed By:

Satyanarayana Veera Venkata Chebrolu

Resolution Professional for K.Tara Bai, Personal Guarantor,
Reg. No. IBBI/IPA-003/IPA-ICAI-N00224/2019-2020/12677
Flat No.201, Chandana Residency,
MIG 512 and 513 Near Temple Bus Stop, KPHB Colony
Kukatpally, Hyderabad- 500072

..... Applicant

Date of order: 09.03.2023

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member Judicial
Shri Charan Singh, Hon'ble Member Technical

Appearance:

For Applicant: Shri Manjeet Bucha, PCS

PER BENCH

ORDER

1. This Application is filed under Section 112 (1) and 114 of the Insolvency & Bankruptcy Code, read with 19 of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 and Rule 11 of NCLT Rules, 2016, by the Resolution Professional for Ms K. Tara Bai, Personal Guarantor to Corporate Debtor M/s Vishwa

Infrastructures and Services Private Limited, seeking approval of the repayment plan submitted by the Personal Guarantor.

2. The gist apropos to the Application in brief is that State Bank of India/Financial Creditor had filed Company Petition to initiation Insolvency Resolution Process against **Ms K. Tara Bai**, the personal guarantor to the Corporate Debtor M/s Vishwa Infrastructures and Services Private Limited, u/s 95 of IBC, r/w Rule 7(2) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 and this Tribunal had admitted the same vide orders dated 03.12.2021. Mr. Kiran Kumar Manikwar having registration No. IBBI/IPA-002/IP-N00967/2020-21/13327, was appointed as Resolution Professional with directions to file report u/s 99 of IBC, 2016. The report dated 23.02.2022 has been filed on 25.02.2022 recommending admission of the Petition.
3. Subsequently, an IA was filed by the erstwhile Resolution Professional for his replacement on health grounds and this Tribunal vide order dated 22.04.2022 had appointed the Applicant herein to take forward the Insolvency Resolution Process against the Personal Guarantor.
4. This Tribunal vide order dated 13.05.2022 had ordered commencement of Insolvency Resolution Process of the Personal Guarantor Ms K. Tara Bai and imposed moratorium u/s 101 of IBC.
5. The Applicant herein had conducted the 1st Creditors Meeting on 10.08.2022 and presented the repayment plan submitted by the Guarantor, however the Personal Guarantor was advised to improve the plan. After few rounds of negotiations with the Personal Guarantor,

the revised repayment plan was placed in the 5th meeting of creditors held on 20.10.2022 and the same was put for e-voting from 23.10.2022 to 02.11.2022, which was extended till 08.11.2022 at the request of the creditors.

6. 6.It is averred that the process commenced on 13.05.2022 and the same was to be completed within 120 days. However, at request, this Tribunal had granted 60 days extension of time vide order dated 29.09.2022. Subsequently, a second extension of 45 days was also granted vide this Tribunal order dated 18.11.2022 and the completion of the process was 24.12.2022.
7. Again in the 6th Meeting of creditors held on 14.12.2022, the final revised plan submitted by the Guarantor was proposed for voting by the Resolution Professional and one of the creditors viz. SBI requested to keep the voting window open up to 22.12.2022. Accordingly e-voting was held from 16.12.2022 till 22.12.2022, which was again extended till 23.12.2022 at the request of SBI. Ultimately on 27.12.2022, SBI vide email dated 27.12.2022 gave their consent in favour of the repayment plan. Therefore, having approved the repayment plan submitted by Ms. K. Tara Bai, Personal Guarantor with **100% in value of the creditors in the voting as against the requirement of 75%, Section 111** of IBC has been complied with.
8. The Resolution Professional has complied with Section 112 (1) of the Code by preparing a report of the meeting of the creditors on the repayment plan as under:-

(i) The repayment plan has been approved with 77.27% value of the creditors present in person in the meeting and voted on the resolution and no modifications proposed.

(ii) The following resolution was proposed at the meeting and the creditors approved with 100% voting. SBI having voting right of 22.73 % though not participated in the e-voting, gave the consent for the repayment plan vide e-mail on 27.12.2022 stating that they have received approval for voting in favour of the Repayment plan.

“RESOLVED THAT the members of the Creditors be and hereby approve the Repayment Plan submitted by Ms. K. Tara Bai Personal guarantor to M/s Vishwa Infrastructures and services private Limited, corporate debtor & authorize the Resolution professional to prepare report under section 112 of IBC 2016 and submit to Adjudicating Authority and to do all acts, deeds and matters as may be necessary to give effect to this resolution “.

(iii) (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 is as under:-

S.No.	Name of the creditor	Voting %	Voting in favour/against
1	IDBI Bank Limited	25.16	Favour
2	State Bank of India	22.73	Vide e-mail dt. 27.12.2022 informed that they are in favour
3	ICICI Bank Limited	19.07	Favour
4	AXIS Bank Limited	11.09	Favour
5	Union Bank of India	9.16	Favour
6	Kotak Mahindra Bank Limited	8.60	Favour
7	Yes Bank Limited	4.19	Favour

	Total	100.00	
	Total of voting % in favour	100.00	

The voting reports and certificate issued by the Claim-bridge platform who has conducted the e-voting are annexed as **annexure -8**

(b) Since the creditors in the meeting have approved the repayment plan by voting with 100% voting rights against the requirement of 75%, directions are sought for approval of the repayment plan under section 114(1) of IBC,2016 and directions for implementing the repayment plan if any.

(c) The copy of the report on the meeting of the creditors filed with the Adjudicating Authority has been provided to the debtor and the creditors on 30.12.2022 as required under Section 113 of the Code.

9. **SALIENT FEATURES OF THE REPAYMENT PLAN:**

The salient features of the repayment plan (revised as on 06.10.2022) and Guarantor's letter dated 13.10.2022 confirming changes in the repayment plan submitted by Smt. K.Tara Bai are as under: Repayment plan (revised as on 06.10.2022) and Guarantor's letter dated 13.10.2022 confirming changes in repayment plan are attached as **Annexure 6**.

(i) **Brief details about the engagement of debtor with the CD:**

The debtor Smt K.Tara Bai is the relative (mother) of Mr. K.Vijay Kumar who was the promoter of and director of corporate debtor, M/s Vishwa Infrastructures and Services Pvt Ltd. The debtor had executed personal guarantee for the repayment of credit facilities availed by the Corporate Debtor as well as created charge by way of mortgage on immovable property owned by her situated at H.No. 1-2-511/1, Domalguda,

Ambedkar Nagar, Himyatnagar, Hyderabad – 500 029. The said property has been sold through arrangement with State Bank of India for a sum of Rs.3.42 crores and the amount was paid to SBI which is lead bank for the consortium of lenders who granted credit facilities to Corporate Debtor.

(ii) Details of claims received, admitted and voting right are as under:

					Amount in Rupees	
S.No.	Name of the creditor	Amount Claimed	Amount admitted	Security interest if any	voting right %	
Claims from Banks						
1	SBI	3,28,93,32,738	3,27,72,16,192	Nil	22.73	
2	Kotak Mahindra Bank	1,23,98,71,107	1,23,98,71,107	Nil	8.60	
3	UBI	1,32,00,67,118	1,32,00,67,118	Nil	9.16	
4	Yes Bank	60,32,88,758	60,32,88,758	Nil	4.18	
5	IDBI Bank	3,62,72,72,784	3,62,72,72,784	Nil	25.16	
6	Axis Bank	1,59,84,85,470	1,59,84,85,470	Nil	11.09	
7	ICICI Bank	2,74,98,14,002	2,74,98,14,002	Nil	19.08	
	Total	14,42,81,31,977	14,41,60,15,431			

(iii) **Details of the excluded assets and excluded debts:**

It is stated in the repayment plan that the debtor does not have any liabilities within the criteria of excluded debts and as such has not proposed to avail the benefit of excluded asset(s) if any.

(iv) **Payment to the creditors:**

The debtor has proposed to make payment of Rs. 100 lacs (Rupees One crore only) to the creditors. Creditor wise payment proposed is as under:

S.No.	Name of the creditor	voting right %	Amount Rs.
Claims from Banks			
1	IDBI Bank	25.16	25,16,141
2	State Bank of India	22.73	22,73,316

3	ICICI Bank	19.07	19,07,472
4	Axis Bank	11.09	11,08,826
5	Union Bank of India	9.16	9,15,695
6	Kotak Mahindra Bank	8.60	8,60,065
7	Yes Bank	4.18	4,18,485
	Total	100.00	1,00,00,000

The above amount proposed will be paid in instalments as hereunder as per the letter dated 13.10.2022 of the Guarantor.

Particulars	Amount in Rs.	Payment date (on or before)
Ist Instalment	10,00,000	3 months from NCLT approval date
2 nd Instalment	10,00,000	6 months from NCLT approval date
3 rd Instalment	20,00,000	9 months from NCLT approval date
4 th Instalment	20,00,000	12 months from NCLT approval date
5 th Instalment	20,00,000	15 months from NCLT approval date
6 th Instalment	20,00,000	18 months from NCLT approval date
Total	1,00,00,000	

- (a) It is clarified by the Debtor that the payment as set out above is towards full and final settlement of the debts. The undischarged component of such debts and any amounts payable by the debtor to any creditor prior to the insolvency commencement date who has not filed its claims shall stand unconditionally and irrevocably extinguished upon issue of discharge order.
- (b) No payment is proposed by the debtor to any other unsecured creditors and the claims of the said creditors pertaining to the period prior to insolvency commencement date of the debtor i.e. 13.05.2022 shall stand unconditionally and irrevocably extinguished.

- (c) Directions for compliance for others: As set out in repayment plan as Clause 4.3.4
- (i) All inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial regulatory or administrative proceedings against the Debtor in relation to the debts, whether forming part of claims admitted by RP or not, whether accrued or which may accrue in future shall be disposed of without any further proceedings threat and all unfulfilled and undischarged claims against the debtor whether or not covered under the claims filed with the RP set out herein, will be deemed to have been written off in full and permanently extinguished by virtue of the order of the Adjudicating Authority approving this repayment plan and the debtor shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
- (ii) By virtue of the order of AA approving the repayment plan no new inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be initiated or admitted as regards any outstanding/undischarged claims pertaining to the Debts.
- (d) **Payment of Personal Insolvency Resolution process cost:**
The Personal Insolvency Resolution process cost is estimated at Rs.1.5 lakhs. The debtor proposes to make payment towards entire insolvency resolution process costs at actuals in priority over the payment to creditors from available cash and bank balance before each proposed instalment payment to the creditors of debts.

(e) **Sources of funding:**

The debtor proposes to make payment as envisaged under this repayment plan from the following sources:

	Source of funding	Amount Rs.
i.	Sale of jewellery/Liquid assets	1,60,000
ii.	Loan from family & friends	98,40,000
	Total	1,00,00,000

(f) **Supervision of the repayment plan during its term as set out in Chapter 6**

RP shall supervise the implementation of the repayment plan and can seek directions from the NCLT if necessary about any matter arising from this repayment plan.

(g) **Other terms and conditions and relief sought by debtor as set out under point 6.3 and 6.5 of repayment plan:**

- (i) Withdrawal of all the legal proceedings before various fora against the debtors as set out in annexure I to the repayment plan initiated by various creditors within one month of the fulfilment of repayment obligations by the debtor in accordance with the terms of this repayment plan.
- (ii) Written off liability arising out of this settlement with creditors shall not be subject to any kind of tax.
- (iii) All the outstanding negotiable instruments issued by the Personal Guarantor including demand promissory notes and post-dated cheques shall stand terminated and the liability under such instruments shall stand extinguished.

- (iv) Once the repayment plan is approved in the meeting of creditors and after issue of discharge order by AA, the clauses if any in the loan agreements/documents executed by personal guarantor with regard to after acquired property or later acquired property/future property of the personal guarantor stipulating will become collateral/prime security for the credit facilities extended either to the personal guarantor or to the others extended based on the personal guarantee executed by personal guarantor should not be operative and it shall be treated as null and void.
- (v) The debtor shall be entitled to share a certified copy of this repayment plan and the order of NCLT approving this repayment plan with third parties including statutory/Government authorities wherever needed.
10. We heard Shri Manjeet Bucha Ld. PCS for the Applicant and perused the record on the repayment plan of the Personal Guarantor. The repayment plan is in compliance with the provisions of law for the time being in force. The safeguards for the due implementation of the repayment plan also have been provided. The Repayment Plan has been voted with 100% majority. Therefore, we are satisfied that the Repayment Plan is in the best interest of the creditors.
11. We therefore, hereby approve the same with effect from the date of this order, with the following directions:-
- (a) The Resolution Professional shall supervise the implementation of the Repayment Plan as per the terms and conditions mentioned therein and file his final report soon after the implementation of the plan or upon completion of the timelines mentioned in the plan, whichever is earlier.

- (b) Upon completion of the Repayment Plan, the Resolution Professional shall comply with the provisions stated in Section 117 of the Code.
- (c) The creditors shall withdraw all the legal proceedings before various fora against the debtor within one month of the fulfilment of repayment obligations by the debtor in accordance with the terms of the repayment plan.
- (d) Any liability arising out of the settlement with creditors shall not be subject to any kind of tax.
- (e) All outstanding negotiable instruments issued by the Personal Guarantor in favour of the financial creditor including demand promissory notes and post-dated cheques shall stand terminated and the liability under such instruments shall stand extinguished.
- (f) The clauses, if any in the loan agreements/documents executed by personal guarantor with regard to after acquired property or later acquired property/future property of the personal guarantor stipulating will become collateral/prime security for the credit facilities extended either to the personal guarantor or to others extended based on the personal guarantee executed by personal guarantor shall not be operative and it shall be treated as null and void.
- (g) The debtor is permitted to share a certified copy of this repayment plan and order of this Tribunal approving this repayment plan with third parties including statutory/government authorities wherever needed.
- (h) The approval of the Repayment Plan shall not be construed as waiver of excluded debts as defined u/s 79(14) if any.
- (i) The Registry is directed to send a copy of this order to IBBI.

- (j) The Resolution Professional, the Applicant herein shall forward all the records pertaining to Insolvency Resolution Process against the Personal Guarantor to IBBI.

SD/-

(Charan Singh)
Member(Technical)

SD/-

(Dr. Venkata Ramakrishna Badarinath Nandula)
Member (Judicial)

Binnu