IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301 - IA/730(AHM)2024 and
ITEM No. 302 - IA/816(AHM)2024 in
C.P.(IB)/59(AHM)2021

Order under Regulation 22 of IBBI Regulation 2019

IN THE MATTER OF: IA/730(AHM)2024

Sunil Kumar Agarwal RP of Navin Kumar Tayal PG to Krishna Knitwear Technology Ltd. **........Applicant**
V/s
Navin Kumar Tayal Personal Guarantor of Krishna Knitwear Technology Ltd. **….Respondent**

And

Order under Section 106 &112 & 123 of IBC 2016

IN THE MATTER OF: IA/816(AHM)2024

Sunil Kumar Agrawal RP of Mr. Navin Kumar Tayal PG of Krishna Knitwear Technology Ltd. **........Applicant**
V/s
Mr. Navin Kumar Tayal PG of Krishna Knitwear Technology Ltd. **….Respondent**

Order delivered on 01/08/2024

Coram:
Mr. Shammi Khan, Hon'ble Member (J)
Mr. Sameer Kakar, Hon'ble Member (T)

PRESENT:
For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

SEN

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, AHMEDABAD

IA/816(AHM)2024 and
IA/730(AHM)2024
in
C.P.(IB)/59(AHM)2021

In the matter of :

IA/816(AHM)2024
[An application filed under Section 106 r.w. Section 112 a.w. Section 123(1)(b) of *the Insolvency and Bankruptcy Code,*]

Sunil Kumar Agrawal
Resolution Professional for Mr. Navin Kumar Tayal
Personal Guarantor of Krishna Knitwear Technology Limited
Having IBBI Regn. No. IBBI/IPA-001/IP-P01390/12178
Having Office address at:
B 1221, Sun West Bank,
Near Shiv Cinema,
Ashram Road, Ahmedabad-380009.

...Applicant

Versus

Mr. Navin Kumar Tayal
Personal Guarantor of Krishna Knitwear Technology Ltd.
Having address at:
101/102, Happy House,
Old Sonapur Lane, Prabhadevi, Dadar,
Mumbai, Maharashtra-400025.

Also having address at:
Kamat Industrial Estate, 396,
Veer Savarkar Marg, Prabhadevi,
Mumbai-400025.

....Respondent

And

<u>In the matter of :</u>

IA/730(AHM)2024

[An application filed under Regulation 22 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Regulations, 2019]

Sunil Kumar Agrawal
Resolution Professional for Mr. Navin Kumar Tayal
Personal Guarantor of Krishna Knitwear Technology Limited
Having IBBI Regn. No. IBBI/IPA-001/IP-P01390/12178
Having Office address at:
B 1221, Sun West Bank,
Near Shiv Cinema,
Ashram Road, Ahmedabad-380009.

....Applicant

Versus

Mr. Navin Kumar Tayal
Personal Guarantor of Krishna Knitwear Technology Ltd.
Having address at:
101/102, Happy House,
Old Sonapur Lane, Prabhadevi, Dadar,
Mumbai, Maharashtra-400025.

Also having address at:
Kamat Industrial Estate, 396,
Veer Savarkar Marg, Prabhadevi,
Mumbai-400025.

....Respondent

<u>Order Pronounced On: 01.08.2024</u>

<u>CORAM:</u>

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant : Mr. Nipun Singhvi, Adv. a.w. Mr. Mayur Jugtawat, Adv.

: Mr. Sunil Kumar Agarwal, RP in Person

For Respondent/PG : Mr. Harmish K. Shah, Adv.

O R D E R
[Per: Bench]

IA/816(AHM)2024

1. This is an application filed by Mr. Sunil Kumar Agarwal Resolution Professional (hereinafter referred to as **"RP"**) of Mr. Navin Kumar Tayal - the Personal Guarantor of Krishna Knitwear Technology Limited under Section 106 r.w. Section 112 a.w. Section 123(1)(b) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) seeking the following prayers:-

   1. *Your Lordship may be pleased to allow the present application and condone 7 days in filing present application;*
   2. *Your Lordship may be pleased to take report attached at Annexure-J on record in compliance of Section 106 of IB Code, 2016 and discharge RP from the process;*
   3. *Your Lordship may be pleased to take minutes of 5th meeting as report attached at Annexure-I on record in compliance of Section 112 of IB Code, 2016;*

4. *Your Lordship may be pleased to grant any other relief as may deem fit in the interest of justice.*

2. It is stated that vide order dated 03.01.2024, this Tribunal admitted the insolvency resolution process against the Personal Guarantor. On the basis of report filed by the RP, this Tribunal declared moratorium in relation to all debts from 03.01.2021. The 180 days period expired on 01.07.2024.

3. It is stated that the public announcement was made by the RP as per provisions of IBC, 2016 on 05.01.2024 in Financial Express (Mumbai Edition) and Navakal Marathi (Mumbai Edition) and on 06.01.2024 in Financial Express in English as well as in Gujarati (Ahmedabad Edition). Subsequent to public announcement, the creditors filed claims. The RP has provided the list of various admitted claims at page no. 7 of this application which is as below:-

List of Creditors as on 20.04.2024			
S.No.	Claim	Total Amount of Claim (Rs.)*	Voting Percentage (%)
1	State Bank of India	3,15,68,82,050.00	4.51
2	UCO Bank Mumbai	2,52,16,05,040.00	3.60
3	Indian Bank	2,60,39,09,856.00	3.72
4	UCO Bank Kolkata	7,34,66,43,799.96	10.50
5	Union Bank of India	5,75,89,07,554.00	8.23
6	Jammu and Kashmir Bank Ltd.	72,82,95,078.43	1.04
7	Canara Bank	2,84,38,71,601.35	4.06
8	Bank Of Baroda	8,07,81,60,829.83	11.54
9	Punjab & Sind Bank	4,33,67,90,797.55	6.20
10	The Federal Bank	1,12,75,56,318.43	1.61
11	M/s. Eloquent Traders Pvt. Ltd	35,06,01,668.00	0.50
12	M/s. Wellworth Apparels Pvt Ltd	80,69,08,193.00	1.15
13	M/s. Heavy Steel Pvt. Ltd	6,87,56,64,830.00	9.82
14	M/s.Tanvish Trading Pvt. Ltd	63,39,21,945.00	0.91
15	M/s. Wellworth Apparels Pvt. Ltd	46,49,37,535.00	0.66
16	M/s. Eloquent Traders Private Limited	81,99,56,184.00	1.17
17	M/s. Royal Comp services Pvt. Ltd	56,83,85,246.00	0.81
18	M/s. Devika Trading Pvt Ltd	3,35,93,77,300.00	4.80
19	M/s. Bodal Conpro Pvt. Ltd	63,79,28,037.00	0.91
20	M/s. Kaushal Logistics Pvt. Ltd	1,69,79,65,754.00	2.43
21	M/s. Rajdeep Clothing and Advisory Pvt. Ltd	1,09,32,94,735.00	1.56
22	M/s. Anukaran Consultancy Private Limited	4,17,38,73,109.00	5.96
23	M/s. Charms Holding Pvt. Ltd	98,99,93,316.00	1.41
24	M/s. Abhinandan Multitrade Pvt. Ltd	2,78,00,20,140.00	3.97
25	M/s. Bridge Infra Pvt. Ltd	1,40,29,44,024.00	2.00
26	M/s. Express Suitings Pvt Ltd	3,54,75,15,718.00	5.07
27	M/s. Wellworth Apparels Pvt Ltd	1,27,86,08,257.00	1.83
	Total	**69,98,45,18,916.55**	**100.00**

CMA SUNIL KUMAR AGARWAL Reg. No.. IBBI/IPA-001/ IP-P01390/ 2018-19/12178

4. It is stated that in terms of Regulation 19 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (hereinafter referred to as **"IBBI (CIRP for PG to CD) Regulations, 2019"**), repayment plan is required to be submitted within 120 days from the commencement of insolvency resolution process. The 120

days period expired on 02.05.2024 and the RP did not receive any repayment plan.

5. It is stated that Personal Guarantor has failed to disclose properties due to which valuation could not be conducted.

6. It is stated that RP sent letter on 04.01.2024 through mail to the Respondent Mr. Navin Kumar Tayal informing him about the admission of Section 95 of the IBC, 2016 application and initiation of Personal Insolvency against him and further sought information regarding the financial of the Personal Guarantor. However, the Respondent did not respond to the same. A copy of the mail is attached as Annexure-B.

7. It is stated that the RP sent another reminder through mail on 10.02.2024.

8. It is stated that the 1st meeting of creditors was held on 27.02.2024 wherein the RP informed the members of the CoC that numerous attempts were made via email and speed post to solicit a repayment plan from the Personal Guarantor. However, no communication was received from the Personal Guarantor. Some of the creditors expressed

their opinion that presence of Mr. Navin Kumar Tayal is essential in the meeting. The CoC deemed it fit to give another opportunity to the Personal Guarantor to present his case before the CoC. The minutes are attached as Annexure-D to the present application.

9. It is stated that the 2nd meeting of CoC was held on 20.03.2024 wherein the RP informed the CoC that no repayment plan was received from the Personal Guarantor. The members of the CoC, thereafter, unanimously authorised the RP to initiate suitable action going forward as he is duty bound also including taking measures to file suitable non-cooperation application in terms of Regulation 22 of IBBI personal Insolvency Resolution Process on Personal Guarantors.

10. It is stated that the 3rd meeting of CoC was held on 13.04.2024 whereat the RP informed the CoC members that Personal Guarantor has submitted few pages document claiming to be his repayment plan. The documents received were shared with the members during the course of meeting. All present disagreed and rejected

the same due to incomplete document and too small amount of Rs. 20 Lakhs against the claim of Rs.6451.88 Crores. Thereafter, the CoC agreed to give one more chance to the Personal Guarantor to revise the plan.

11. It is stated that the 4th meeting of CoC was conducted on 22.04.2024 whereat Mr. Navin Kumar Tayal was present. The RP informed the CoC that Personal Guarantor has submitted a non-complaint repayment plan of an amount of Rs.20 Lakhs against total debt of Rs.44,66,11,92,086/-.

12. It is stated that the RP invited comments of creditors on the repayment plan to which creditors were of the view that the amount offered by Personal Guarantor is very less and, hence, cannot be considered. During the meeting, the Personal Guarantor made clear that he is not in a position to offer more than Rs.20 Lakhs. A copy of the minutes is annexed as Annexure-H.

13. It is stated that the 5th meeting of CoC was conducted on 06.04.2024 whereat the RP presented the legal opinion regarding further course of action. The CoC, thereafter, decided to file application under Section 106 of IBC, 2016

seeking discharge of RP and appropriate permission as required under Section 123(1)(b) of the IBC, 2016. The Personal Guarantor was not present during the meeting. A copy of the minutes is attached as Annexure-I.

14. The RP in his report submits that the 120 days period had expired on 02.05.2024 and that the Personal Guarantor has failed to submit a viable repayment plan and further there was non-cooperation of Personal Guarantor during the process. A copy of RP's report is attached as Annexure-J.

15. In the light of what is stated above, the RP pleads that he has been left with no other option but to prefer the present application.

16. Reply of the Personal Guarantor was filed under inward diary no. D5244 dated 05.07.2024. The brief contents of the reply are as below:-

    I. The Respondent has submitted all the documents which were available with him.

II. It is stated that certain documents relating to companies which are not available with the Personal Guarantor are as under:-

a. Balance Sheet of the Companies for which claims have been received:-

Name of the Companies are as under:-

1. *Global Softech Ltd*
2. *Jaybharat Textile and Real Estate Ltd*
3. *K Lifestyle & Industries Ltd*
4. *KG Corporation Ltd (Formerly Tayal Energy Ltd)*
5. *Krishna Knitwear Technology Ltd*
6. *KSL & Industries Ltd*
7. *Eskay KNIT (India) Limited*
8. *Asahi Industries Ltd*

III. It is stated that the repayment plan submitted within its capacity looking to the current situation of the respondent and the sources of finance available to him and therefore the said plan is proposed. It is further submitted that the respondent had given the repayment plan with good efforts. The respondent reiterates that repayment plan is given taking into consideration the financial constraints.

IV. It is further submitted that composite application is not maintainable as the application combines multiple cause of action and therefore the application deserve to be dismissed.

17. We have heard the counsels and perused the material on record.

18. The order dated 08.07.2024 records as under:-

> *"..Learned Counsel for the applicant / RP seeks opportunity to convene one more CoC meeting to seek a voting result on the issue of repayment plan submitted by the personal guarantor and further proceedings thereof in this regard, which is allowed..."*

19. Subsequent to the above order, the RP has convened another meeting of the CoC on 24.07.2024 and had filed additional affidavit under diary no. D6035 dated 30.07.2024.

20. It is seen that the creditors have voted on the two resolutions which are as under:-

> ***ITEM 1***
> *To consider and vote upon the repayment plan received from Mr. Navin Tayal for Rs 20,00,000/- (Rupees Twenty Lakhs Only) on 11/04/2024 which PG assured in 4th Meeting and this 6th meeting of Creditors to improve/maximum maintain to Rs.25,00,000/- (Rupees Twenty-Five Lakhs Only).*

Resolution No 1
"Resolved that the approval of the creditors is considered for approval of the repayment plan received from Mr. Navin Tayal for Rs 20,00,000/- (Rupees Twenty Lakhs Only) on 11/04/2024 which PG assured in 4th Meeting and this 6th meeting of Creditors to improve/maximum maintain to Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only)."

ITEM 2:
To permit creditors for filing application initiating bankruptcy under section 123(1)(b) of IB Code, if the resolution 1 is not approved by requisite majority.

Resolution No 2
"Resolved that the approval of the creditors is considered to seek the permission from AA to permit creditors for filing application initiating bankruptcy under section 123(1)(b) of IB Code, if the resolution 1 is not approved by requisite majority.

The voting results on the above items are annexed at page nos. 13 and 14.

21. It is seen that the voting concluded on 26.07.2024 wherein the Creditors have rejected the repayment plan by a voting of 52% and approved the resolution seeking filing of application under Section 123(1)(b) of the IBC, 2016 by 52%.

22. As can be seen from Section 109 of IBC, 2016, a creditor shall be entitled to vote at every meeting of the creditors in respect of the repayment plan in accordance with the voting share assigned to him. The RP shall determine the

voting share to be assigned to each creditor in the manner specified by the Board. The Section 109 of IBC, 2016 reads thus:

"109. Voting rights in meeting of creditors –-

(1) A creditor shall be entitled to vote at every meeting of the creditors in respect of the repayment plan in accordance with the voting share assigned to him.
(2) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.
(3) A creditor shall not be entitled to vote in respect of a debt for an unliquidated amount.
(4) A creditor shall not be entitled to vote in a meeting of the creditors if he—
a) is not a creditor mentioned in the list of creditors under section 104; or
b) is an associate of the debtor."

23. As has been provided in Section 110 of IBC, 2016 the Secured Creditor shall also be entitled to participate and vote in the meetings of the creditors. In terms of the provisions of Section 111 of IBC, 2016, the repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors. The Section 111 of IBC, 2016 reads thus:

"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-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors."

24. As can be seen from the aforementioned, the RP has prepared the report of meeting of creditors on repayment plan. It is apparent from the report that the repayment plan has been rejected by the creditors. It is seen that the provisions of Section 113 of IBC, 2016 have been complied with. The Gmail reads thus:-

5/10/24, 7:24 PM Yahoo Mail - SERVICE OF APPLICATION | Sunil Kumar Agrawal RP for Mr. Navin Kumar Tayal Personal Guarantor of Krishna Kni...

SERVICE OF APPLICATION | Sunil Kumar Agrawal RP for Mr. Navin Kumar Tayal Personal Guarantor of Krishna Knitwear Technology Ltd v. Mr. Navin Kumar Tayal Personal Guarantor of Krishna Knitwear Technology Ltd

From: nipun singhvi (nipunsinghvi@yahoo.com)
To: eskay.knit1@gmail.com
Cc: advocatevjdave@gmail.com; mayur.jugtawat@gmail.com
Date: Friday, 10 May 2024 at 07:23 pm GMT+5:30

Dear Sir,

Greetings!!

We are concerned for our client i.e. RP for Mr. Navin Tayal PG of Krishna Knitwear Technology Ltd Mr. Sunil Kumar Agrawal.

We, the undersigned advocate for the Appliacant Mr. Sunil Kumar Agrawal in the above-mentioned subject matter, do hereby serve you advance copy of Application under Section 106 read with Section 112 of IB Code, 2016 before Hon'ble NCLT Ahmedabad Bench.

Kindly consider this mail as a way of service and acknowledge the receipt of the same.

Nipun Singhvi
B.Com.(Hons.),BCCD,LLB,LLM,FCA,LCS, M&A- IIM(A)|
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Volume I - IA to place report of repayment plan - Navin Tayal PG of KKTL.pdf
5.2MB

Volume II - IA to place report of repayment plan - Navin Tayal PG of KKTL.pdf
3.5MB

25. Apparently, the RP has provided a copy of the report prepared in terms of the provisions of Section 112 of IBC, 2016 to the debtor and all the creditors. A copy of the report has also been placed on record as enclosure to this application.

26. As can be seen from the provisions of the 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 the meeting of the creditors submitted by the Resolution Professional under Section 112. The provisions of Section 114(1) of the IBC, 2016 reads thus:-

> ***"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."*

27. As apparent from the report of RP, the creditors have in their meeting convened by the RP rejected the repayment plan. From the provisions of Section 114 of IBC, 2016 it is clear that this Adjudicating Authority need to approve or

reject the repayment plan on the basis of the report of the meeting of creditors. There is no material adduced before us, in terms of which the report may be nixed. In the wake, we are left with no option but to approve the report of RP, recommending the rejection of the repayment plan.

28. As can be seen from the provisions of Chapter-IV of IBC, 2016, particularly Section 121 thereof, in the event of rejection of repayment plan or there being no repayment plan submitted by the debtor/PG, an application for bankruptcy of debtor will be made by creditor individually or jointly with other creditors or by debtor to the Adjudicating Authority in the circumstances mentioned in the section. One of such circumstances is passing of order under Section 115(2) of IBC, 2016.

29. In terms of the provisions of Section 115 (2) of IBC, 2016 with the Adjudicating Authority rejecting the repayment plan under Section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV. The provisions of Section 115(2) of IBC, 2016 reads thus:

> ***"115. Effect of order of Adjudicating Authority on repayment plan–-***
> *.....*
>
> *(2) Where the Adjudicating Authority admits an application under sub- section (1), it may, on the request of the resolution professional, issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan."*

30. In view of the above, delay of 7 days in filing the present application is condoned and prayers 1, 2 and 3 are allowed.

31. Further, the creditor/s shall be at liberty to initiate the proceedings in terms of the provisions of Section 115(2) of IBC, 2016 read with Section 121 thereof.

32. The RP stands discharged and he is entitled to claim IRP costs from the Stakeholders.

33. Let a copy of this order be provided to IBBI for the purpose of recording an entry in the register referred to Section 196 of IBC, 2016. The RP shall also make copies of this order available to all the creditors and Personal Guarantor within one week from today.

34. The **IA/816(AHM) 2024** stands disposed of accordingly. No order as to cost.

IA/730 (AHM) 2024

35. This is an application filed by the RP under Regulation 22 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2016 seeking the following prayers:

1. *Your Lordship may be pleased to allow the present application;*
2. *Your Lordship may be pleased to issue direction under Regulation 22 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations, 2019, Respondents herein to assist and co-operate with the applicant and to comply with the instructions of the applicant and to provide all information required by the RP;*
3. *Your Lordship may be pleased may be pleased to grant any other relief as may deem fit in the interest of justice;*

36. We have heard the counsels and perused the record. This application is filed by the RP seeking co-operation from the Personal Guarantor.

37. As we have already ordered for rejection of repayment plan in IA/816(AHM)2024, nothing survives in this

application. Accordingly, **IA/730(AHM)2024** stands disposed of.

38. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-	**-SD-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

SEN