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

ITEM No.305
IA/910(AHM)2024
in
C.P.(IB)/243(AHM)2021

Order under Section 106 & 112 of IBC Reg 20 IBBI

IN THE MATTER OF:

Sunil Kumar Kedia RP in the Matter of PG Rohit S Sharma ....**Applicant**
V/s
Shri Rohit S Sharma ....**Respondent**

Order delivered on: 21/08/2024

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

PRESENT:
For the Applicant :
For the Respondent :

ORDER

(Hybrid Mode)

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

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

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

IA No. 910 of 2024
in
CP (IB) No. 243 of 2021

[*Application under Section 106 and 112 of IBC 2016 r/w Regulation 20 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.*]

In the matter of:

SUNIL KUMAR KEDIA
Resolution Professional for Shri Rohit S Sharma
Personal Guarantor of CLS Industries Private Limited.
Having Registered Office at:
210/B, 21st Century Business Centre,
Ring Road, Surat - 395002

.... Applicant

VERSUS

Shri Rohit S Sharma
Personal Guarantor of CLS Industries Private Limited.
Having Residence at:
Plot No. 30, Sector 1,
Gandhidham, Gujarat

.... Respondent/Guarantor

Order Pronounced on: 21.08.2024

CORAM:

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

For the Applicant/RP :Ms. Aditi Sharma Adv. for
Mr. Atul Sharma, Adv.

For the FC/SBI	: Mr. Mandeep Singh Saluja Adv. for Mr. Rituraj Meena, Adv
For Raj Radhe Finance Ltd.	: Mr. Pratik Thakkar, Adv.
For the Respondent/PG	: Ms. Neeta Pandit, Adv.

ORDER

1. The present application is filed by the Applicant Resolution Professional in the matter of Personal Guarantor Shri Rohit S. Sharma under Section 106 and 112 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 20 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, in the captioned Company Petition CP (IB) No. 243 of 2021 filed by the Financial Creditor against the Personal Guarantor, seeking following reliefs:

    a. *To take on record of Report of Resolution Professional stating that 'No Repayment Plan' has been received by the RP from Debtor/Personal Guarantor.(Sec. 106 of IBC 2016)*
    b. *To pass an appropriate order u/s.114 in absence of any Repayment Plan filed by the Personal Guarantor.*
    c. *To allow the Debtor and Creditors to entitle to make an application for Bankruptcy under Chapter IV of IBC Code, 2016.*
    d. *To discharge Resolution Professional from his duties under Chapter III of IBC Code 2016.*

e. *Such other consequential, supplementary and incidental relief or direction as this Hon'ble Tribunal may deem fit and necessary to meet the ends of justice.*

2. **Facts and Background:**

2.1. It is submitted that this Tribunal vided its order dated 4th January 2024 admitted an application under section 95 of the IBC, 2016 in respect of Insolvency Resolution Process against Rohit S Sharma (Personal Guarantor) in CP (IB) 243 (AHM) 2021 who is the personal guarantor for the credit facilities provided by State Bank of India to the Corporate Debtor CLS Industries Private Limited and appointed Sunil Kumar Kedia (Insolvency Professional) IBBI/IPA-001/IP-P00028/2016-17/10064 as the Resolution Professional.

2.2. It is stated that the Resolution Professional (Applicant) made Public Announcement inviting claim on 10th January 2024 in two newspapers namely Financial Express in Gujarati language (Ahmedabad Edition) (covering Surat city) and Financial Express in English language (Ahmedabad Edition) (covering Surat city). Last date for receipt of claim was 31st January, 2024.

2.3. It is submitted that the Resolution Professional (Applicant) prepared a List of Creditors and submitted before this Tribunal and all the stakeholders. Thereafter, there was a modification in the list of creditors since one of the Creditor M/s. Raj Radhe Finance Limited has expressed its willingness not to forfeit its right on the asset mortgaged and accordingly the claims are modified and unsecured portion of Creditor remain as claim.

Modified summary of Claims of Creditors & Percentage of Voting Share are as under:-

S. No.	Creditor	Claim Amount	Secured / Unsecured	Percentage of Voting
1	**State Bank of India** Stressed Assets Management Branch, 2nd Floor, Paramsiddhi Complex, Opp. V. S. Hospital, Ashram Road, Ahmedabad - 380006	352128576.76	Secured	83.52%
2	**Raj Radhe Finance Limited** 47, Shyamal Row House 3/B, Near Shyamal Cross Roads, Ahmedabad – 380015	69485898.50	Unsecured	16.48%
	Total	**421614475.26**		**100.00%**

2.4. It is submitted that in spite of repeated request / reminders for submission of Statement of Affairs / Details required to prepare Statement of Affairs / Repayment Plan, the Personal Guarantor failed to submit Repayment Plan and complete details of the assets to prepare 'Statement of Affairs'. Various letters has been issued by RP to the Personal Guarantor in this regard vide letter/emails dated 12/02/2024, 23/02/2024, 26/02/2024, 08/03/2024, 09/04/2024, 17/04/2024, 19/04/2024, 03/05/2024, 25/05/2024.

2.5. It is stated that there were 5 meetings of Committee of Creditors was held on dated 04/03/2024, 09/04/2024, 08/05/2024, 24/05/2024, 04/06/2024 where the Personal Guarantor was also present in the meeting. The entire issue of non-submission of details of assets owned by the Personal Guarantor and non-submission of Repayment Plan was discussed in the above meetings.

2.6. It is stated that in absence of complete details of the assets of the Personal Guarantor and also in absence of any repayment plan, the Resolution Professional fails to proceed with the subsequent Proceeding as per Chapter III of IBC Code and accordingly prepared a Report u/s. 106 which is submitted along with this application. Copy of the RP Report u/s.106 is annexed to **Annexure A/1**.

2.7. In its Report, Resolution Professional explained that Non- submission of Repayment plan by the Personal Guarantor amounts to rejection of Repayment Plan us/.114 as provided under Section 115(2) of IBC 2016. The main content of RP Report is as under :-

"As per section 105 of IBC, 2016 the debtor shall submit a repayment plan and then the Resolution professional shall submit the repayment plan along with his report to the Adjudicating Authority. After conducting the meeting of creditors on the repayment plan the Resolution professional shall prepare a report of the meeting of creditors and submit it to the Adjudicating Authority. The Adjudicating Authority then pass an order either approving or rejecting the report. But in this case, in the absence of any repayment plan filed by the personal guarantor, the supra procedure could not be carried out. The non- filing of the repayment plan causes a similar effect of rejection of the repayment plan under Section 114 as provided under Section 115(2) of IBC 2016."

2.8. It is submitted by the applicant RP that the Insolvency Process was commenced on 4th January 2024 and as per regulation 19 RP is to file Report u/s.106 or 112 within 120 days from the date of commencement of

Insolvency that ended on 03rd May 2024 and accordingly there is a delay in filing the Report by 33 days.

In this regard, the RP prays to the Adjudicating Authority to condone the delay in filing the Report by 33 days.

3. The matter was taken up for hearing by this tribunal on 02.07.2024 where notices were issued to the Respondent/Personal Guarantor as well as the Financial Creditors who were directed to file a reply, if any, within a week from the date of receipt of notice and thereafter rejoinder, if any, be filed by the applicant within seven days.

4. A **reply** was filed by State Bank of India, the secured Financial Creditor in CP (IB) No. 243 of 2021, on 31.07.2024 vide Inward Diary No. D5989 wherein following submissions were made:

i. It is submitted that the State Bank of India had preferred an application bearing no. CP (IB) 243 of 2021 under section 95 of the Insolvency and Bankruptcy Code, 2016 to initiate the Insolvency Resolution Process against Shri Rohit Shyam Sharma, as Shri Rohit Shyam Sharma has executed personal guarantor agreement for the credit facilities availed by the principal borrower- CLS Industries from State Bank of India.

ii. It is submitted that vide order dated 04.01.2024, the Adjudicating Authority admitted the matter and ordered to initiate the Insolvency proceeding against respondent no. 1- Shri Rohit Shyam Sharma.

iii. It is further averred that the applicant/ resolution professional had followed the rules and regulations framed under the code and had called MOC meetings and also through multiple reminders had asked Shri Rohit Sharma to provide the required documents and repayment plan however Shri Rohit Sharma has failed to provide the same.

iv. It is submitted that the report of the resolution professional u/s 106 of the Code, suggests that No repayment plan has been received by the Resolution Professional from the Personal Guarantor in spite of giving sufficient time and opportunity. It is submitted that as no-repayment plan has been filed by respondent no. 1 herein therefore it is prayed to consider the report filed by the applicant.

v. It is submitted that the principal borrower failed to pay the dues of the bank, and hence the account of the principal borrower defaulted, and subsequently as per procedure, State Bank of India declared the account of the principal borrower as a Non-Performing Asset. That vide order dated 02.09.2020, this Tribunal admitted the matter against the principal borrower- CLS Industries and ordered to initiate insolvency proceedings against the Principal borrower.

vi. It is submitted that, vide agreements dated 02.02.2011, 10.02.2012 and 28.03.2014 Shri Rohit S Sharma, executed personal guarantee agreements with the State Bank of India to secure the financial facilities granted by the bank to the principal borrower- CLS Industries.

vii. It is submitted that the State Bank of India issued notices to the principal borrower and personal guarantors under sections 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 & Rules on 03.7.2017 and 06.10.2017 respectively, to recover an amount in default of Rs. 14,91,03,319.84/ as on 29.06.2017 thereafter initiated recovery proceeding in Learned DRT Ahmedabad.

viii. That on 03.08.2021, the State Bank of India issued a demand notice under section 95(4)(b) of the Insolvency and Bankruptcy Code read with Rule 7(1) of the Insolvency and Bankruptcy (Application to adjudicating authority for insolvency resolution process of personal guarantors to corporate persons) Rule, 2019 to Shri Rohit Shyam Sharma.

ix. It is submitted that credit facilities granted by the State Bank of India to the principal borrower were secured inter alia by way of hypothecation charge over the current assets and movable assets of the principal borrower, by way of equitable mortgage charge over the immovable assets of the principal borrower and by way of personal guarantees of the promoters/directors which is duly signed by Shri Rohit Sharma.

x. It is submitted that as the principal borrower has proven unable to fulfill its financial obligations to the State Bank of

India, it is imperative to acknowledge that, according to the terms outlined in the executed guarantee agreement by the personal guarantor, the responsibility for settling the outstanding amount shifts to the personal guarantors. It is submitted that this contractual provision necessitates that Shri Rohit Sharma, being one of the personal guarantors, is also held liable for the outstanding dues owed to the State Bank of India. The guarantee agreement serves as a binding contract, legally obligating the guarantor to ensure the repayment of the loan in the event of default by the borrower. Therefore, given the default situation of the principal borrower, respondent no. 1- Mr. Rohit Shyam Sharma is legally obligated to discharge the financial liabilities owed to the State Bank of India as per the terms stipulated in the guarantee agreement.

xi. It is respectfully submitted that absence of the requisite details regarding the assets of Respondent No. 1 PG, coupled with the lack of a repayment plan, impedes the applicant's ability to proceed with subsequent proceedings under Chapter III of the Insolvency and Bankruptcy Code, 2016. Consequently, a report under Section 106 of the Code has been prepared. It is further submitted that non-submission of a repayment plan by the personal guarantor constitutes a rejection of the repayment plan u/s Section 114, as provided under Section 115(2) of the Insolvency and Bankruptcy Code, 2016. In light of the foregoing, it is prayed that this Adjudicating Authority accept the report filed by the Applicant/Resolution Professional and order for closure of Insolvency Proceedings against Shri Rohit Shyam Sharma and an appropriate bankruptcy order may be passed under Chapter IV of the Insolvency and Bankruptcy Code, 2016.

5. In the hearing dated 07.08.2024, the Personal guarantor, despite given multiple opportunities to file a reply, sought another opportunity from this Tribunal. However, this Tribunal was of the view that sufficient opportunities were given to all the parties to file a reply and hence no further opportunity will be given and the right to file a reply was thereby closed. It is also seen that the prayers and the oral submissions made by the applicant in the hearing, were supported by both the Financial Creditors.

6. We heard the Learned Counsel for the Applicant/RP, both Financial Creditors as well as Ld. Counsel for the Respondent/Personal Guarantor and perused the material available on record.

7. **Observation and Directions of this Tribunal:**

I. It is seen that the Insolvency Process was commenced on 4th January 2024 and as per regulation 19 RP is to file Report u/s.106 or 112 within 120 days from the date of commencement of Insolvency that ended on

03rd May 2024 and accordingly there is a delay in filing the Report by 33 days. In this regard, condonation of delay in filing the report is sought by the applicant RP.

II. In the interest of justice, this Adjudicating Authority accordingly condones the delay in filing of the report by the RP and proceeds to adjudicate the present application.

III. The reading of Section 106 of the Code is given as follows:

> *"106. **Report of resolution professional on repayment plan.** –*
>
> *(1) The resolution professional shall submit the repayment plan under section 105 along with his report on such plan to the Adjudicating Authority within a period of twenty-one days from the last date of submission of claims under section 102.*
>
> *(2) The report referred in sub-section (1) shall include that- (a) the repayment plan is in compliance with the provisions of any law for the time being in force; (b)the repayment plan has a reasonable prospect of being approved and implemented; and (c) there is a necessity of summoning a meeting of the creditors, if required, to consider the*

repayment plan: Provided that where the resolution professional recommends that a meeting of the creditors is not required to be summoned, reasons for the same shall be provided.

(3) The report referred to in sub-section (2) shall also specify the date on which, and the time and place at which, the meeting should be held if he is of the opinion that a meeting of the creditors should be summoned.

(4) For the purposes of sub-section (3) - (a) the date on which the meeting is to be held shall be not less than fourteen days and not more than twenty-eight days from the date of submission of report under subsection(1); (b)the resolution professional shall consider the convenience of creditors in fixing the date and venue of the meeting of the creditors. "

IV. As per section 106 of IBC 2016 the debtor shall submit repayment plan, then the Resolution professional shall submit the repayment plan along with his report under Section 105 to the adjudicating Authority. After conducting the meeting of creditors on the repayment plan the Resolution professional shall prepare report of the meeting of creditors and submit it to the Adjudicating Authority. The Adjudicating Authority may then pass an order either approving or rejecting the report.

V. In the case before us, in the absence of any repayment plan filed by the personal guarantor, the procedure on supra could not be carried out. In such cases where no repayment plan is offered, the RP is left with no option, but not to summon the meeting of the Creditors and simply file a report that since no repayment plan was filed, there may be no justification of summoning the meeting of the creditors. In such backdrop, the order in terms of the proviso to Section 114 of IBC, 2016 would be warranted.

VI. Section 114 of the Code states that:

> ***"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. "

VII. In the given circumstances, since the Personal Guarantor has not filed repayment plan in spite of given sufficient time, this tribunal is of the opinion that it is to be given a similar effect of rejection of repayment plan.

VIII. Thus, this application **I.A No. 910 of 2024** in CP (IB) No. 243 (AHM) of 2021 is ***allowed*** and stands disposed of.

IX. The debtor and creditors shall be at liberty to initiate the bankruptcy proceedings against the Personal Guarantor in terms of the provisions of Section 115(2) of IBC, 2016 read with Section 121 thereof under Chapter IV.

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

XI. 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.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

HG