



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

**IA(IBC)/13/KOB/2023
In
CP(IB)/05/KOB/2022
&
IA(IBC)/14/KOB/2023
In
CP(IB)/04/KOB/2022**

(Under section 112 and 114 of IBC, 2016)

In the matter of:

Mr. S Nazar, Personal Guarantor of Nasco Trading India Pvt Ltd.

MEMO OF PARTIES:

IA(IBC)/13/KOB/2023 In CP(IB)/05/KOB/2022

In the matter of:

Mr. Padmakumar K. C , Resolution Professional, T.C 15/1997(3), Fair Dreams,
Womens College North Gate, Thiruvananthapuram-694014;

...Applicant

-Versus-

Mr. S Nazar, SB House, Alamkode P O, Attingal-696102;

...Respondent

-And-

In the matter of:

Ms. Raheena, Personal Guarantor of Nasco Trading India Pvt Ltd.

MEMO OF PARTIES:

IA(IBC)/14/KOB/2023 In CP(IB)/04/KOB/2022

Mr. Padmakumar K. C, Resolution Professional, T.C 15/1997(3), Fair Dreams,
Womens College North Gate, Thiruvananthapuram-694014;

...Applicant

-Versus-

Ms. Raheena, SB House, Alamkode P O, Attingal-696102.

...Respondent



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& Conn Case

In re Mr. S Nazar & Ms. Raheena, Personal Guarantor of Nasco Trading India Pvt Ltd

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant's : Sankar Panicker, Advocate
Padmakumar K. C.,
(RP in person)
For Personal Guarantor : Nil, Ex Parte vide order dated
15.02.2023
For Financial Creditor : Vinod PV, Advocate

Order reserved on: 15.02.2023
Order pronounced on: 03.05.2023

ORDER

1. Since, these Applications arise from the Insolvency Resolution Process of Personal Guarantors of **Nasco Trading India Pvt Ltd.**, the Corporate Debtor, both applications have been taken together and common order is passed.
2. These applications have been filed by Mr. Padmakumar K. C., the Resolution Professional in the matter of Mr. S Nazar and Ms. Raheena, Personal Guarantors to Nasco Trading India Pvt. Ltd. seeking an order of this Tribunal under section 114 to reject the repayment plan as per the report of the resolution professional under section 112 of IBC which was rejected by the creditors.
3. It is noted that the insolvency resolution process against Mr. S Nazar and Ms. Raheena, Personal Guarantors to Nasco Trading India Pvt. Ltd was initiated by way of an application under section 95 by the State Bank of India.
4. These applications were admitted by this Tribunal by way of an order dated 11.03.2022 in CP(IB)/04 & 05/KOB/2022. *Vide* same order, the applicant herein was appointed as the resolution professional under section 97.



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5. A public announcement was made in Business Line and Mathrubhumi newspapers on 02.07.2022 intimating the commencement of the insolvency resolution process against Mr. S Nazar and Ms. Raheena inviting claims from creditors by 23.07.2022.
6. The personal guarantors submitted a repayment plan under section 105 of the Code. The report of the resolution professional on the repayment plan under section 106 of the Code was submitted to the Tribunal on 10.08.2022.
7. A meeting of the creditors was held on 13.10.2022 to consider the repayment plan submitted by the personal guarantor. The repayment plan was rejected by the sole creditor- SBI.
8. This Tribunal *vide* order dated 10.11.2022 took on record the report of the meeting of creditors on 13.10.2022 submitted by the resolution professional under section 112. As per the report, three creditor meetings were conducted by the resolution professional with the sole creditor- the State Bank of India.
9. The personal guarantor was allowed an opportunity to improve the repayment plan and the same was considered at the meeting of the creditors held on 06.12.2022. At the meeting, the sole creditor (100% voting share) rejected the revised repayment plan submitted by the personal guarantor since it envisaged a 90% write-off in the amount due, ie. an offer of Rs.650 lakh against a total admitted claim of Rs.52,01,93,066/-.
10. The Tribunal has perused the report of the resolution professional under section 112 and observed that the repayment plan has not received the approval of creditors holding more than three-fourths value as required under section 111.
11. This Tribunal had on 05.01.2023, directed to issue notice to the Personal Guarantor and Financial Creditor to defend the case. However, no representation was made from the side of the respondent personal guarantors despite delivery of notice. Hence, the respondent personal guarantors were set *ex parte* *vide* order dated 15.02.2023 by this Tribunal.



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12. Heard submissions and perused documents on record. Section 114(1) of the IBC, 2016 states as follows:

“114. (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.”

As per subsection (1) provided above, this Tribunal perused the report of the RP under section 112 wherein meetings and deliberations have been held between the PG and FC. Despite the same, no viable repayment plan for the debt is found to be in place.

13. In view of the above facts, the repayment plan submitted by the personal guarantors under section 105 stands rejected in line with the report of the resolution professional under section 112.

14. The moratorium declared under section 101 shall cease to have effect from the date of this order.

15. In consequence of the rejection of the repayment plan under section 114, the debtor and the creditors are entitled to file an application for bankruptcy under Chapter IV of the Code under Part III.



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16. The prayer relating to SARFAESI Act, 2002 proceeding is unconnected to this application and to this Adjudicating Authority, hence the said prayer is not conceded.
17. These Applications are therefore, disposed of accordingly.
18. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.
19. Let the certified copy of the order be issued upon compliance with requisite formalities.
20. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.05.03 16:03:41 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.05.03 14:44:26
+05'30'

P. Mohan Raj
Member (Judicial)

Signed on this the 3rd day of May, 2023.

Rohit