# NATIONAL COMPANY LAW TRIBUNAL
## AMARAVATI BENCH
## (Video Conference)

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 17.03.2023 AT 10.30 AM**

| TC/CP. Nos. | CA/IA No. | Section/ Rule | Name of Parties |
|---|---|---|---|
| CP(IB)No.217/94/AMR/2019 | Main Case | 94 Of IBC | Omkaram Venkata Ramana in the matter of Nitin Grains and Mills Pvt Ltd & 4 others |
| | IA(IBC)/58/2022 | 112 of IBC | Sreenivasa Rao Ravinuthala (RP) of Omkaram Venkata Ramana (Debtor) Vs. Bank of India |

## ORDER

**IA(IBC)/58/2022:**

Ms.Sarvani Desiraju, Counsel for the Applicant present. Ms.Divya Dokka, Counsel for R2 present. Orders pronounced. IA(IBC)/58/2022 is allowed, vide separate orders.

Sd/-
**JUSTICE TELAPROLU RAJANI**
**MEMBER JUDICIAL**

*RSN*

# NATIONAL COMPANY LAW TRIBUNAL
# AMARAVATI BENCH AT MANGALAGIRI

**IA(IBC)/58/2022**
**IN**
**CP (IB) No.217/94/AMR/2019**

**Under Section 112 of the Insolvency and Bankruptcy Code, 2016**
**And**
In the matter of **Mr.Omkaram Venkata Ramana**

**BETWEEN:**

Sreenivasa Rao Ravinuthala,
Resolution Professional for
Mr.Omkaram Venkata Ramana (Personal Guarantor),
Office at F26, Raghava Ratna Towers,
Chirag Ali Lane, Hyderabad - 500001,

.... Applicant/RP

AND

1. Bank of India

... 1st Respondent/FC

2. Mr.Omkaram Venkata Ramana,

... 2nd Respondent/Personal Guarantor

**Date of pronouncement of orders: 17.03.2023**

***Coram*:**

**Justice Telaprolu Rajani, Member Judicial.**
Parties/Counsels present:

For the Applicant : Ms. Sarvani Desi Raju, Advocate

For the 1st Respondent : Mr.Sethu Madhava Rao, Advocate

For the 2nd Respondent : Ms. Divya Dokka, Advocate

## ORDER
***Per: Justice Telaprolu Rajani, Member Judicial***

1. This application is filed by the Applicant/Resolution Professional seeking for the individual Insolvency Resolution Process initiated under Sec 94, be concluded since the proposed Repayment Plan was rejected by the Creditors Meeting with requite votes and to discharge the Applicant/Resolution Professional from his duties as a resolution professional from the Individual Insolvency Resolution Process of Mr.Omkaram Venkata Ramana.

2. The facts of the case, briefly are as follows:

   i. The Personal Guarantor, Mr.Omkaram Venkata Ramana filed Company Petition i.e., CP(IB)/217/94/AMR/2019 against the Bank of India and the same was admitted by the Tribunal vide its order dated 14.12.2021 and Mr.Sreenivasa Rao Ravinuthala Applicant herein was appointed as Resolution Professional. The Applicant made paper publication dated 24.12.2021 for inviting claims form the Creditors of the Personal Guarantor Mr.Omkaram Venkata Ramana.

   ii. The Applicant has received claims from Bank of India, Secured Creditor and Mr.Sudheer Reddy P, Unsecured Creditor representing 37 farmers.

   iii. The Applicant guided the Personal Guarantor to prepare the Repayment Plan proposing the restructure of his borrowings with creditors, as required under Section 105 of IBC, 2016. The Applicant prepared the report on the Repayment Plan proposed by

the Personal Guarantor under Section 106 of IBC and prepared list of creditors and statement of affairs of the Personal Guarantor. The applicant called the Creditors meeting held on 21.02.2022 by sending notice dated 05.02.2022 to the Creditors, along with report, repayment plan proposed by the Personal Guarantor, statement of affairs and list of creditors. The Creditors meeting was conducted through video /audio means and Bank of India representative required time for getting the approval or rejection of the repayment plan proposed by the Personal Guarantor, hence the meeting was adjourned to 28.02.2022 and on the request of Bank of India, the meeting was adjourned on various occasions i.e., 07.03.2022, 14.03.2022, 21.03.2022, 24.03.2022 & 31.03.2022.

iv. In the meeting held on 31.03.2022, the Bank of India (71.22% voting share) has rejected the proposed repayment plan of the Personal Guarantor without suggesting any modifications. Hence the same was considered as rejected by the Creditors. Hence, this Application.

**3.** Right to file counter of R1 is forfeited. R2 filed counter that Mr. Sudhir Reddy P, who is an unsecured financial creditor who has a voting share of 28.88% has accorded his consent to the repayment plan proposed by R2. In the meeting held on 31.03.2022, the Bank of India, who is said to have voting share of 71.22% has rejected the proposed repayment plan even without suggesting modifications or without giving opportunity to the debtor to modify the repayment plan. Such rejection

of repayment plan submitted by the debtor is arbitrary, capricious and contrary to the principles of equity, and in violation of principles of natural justice. The debtor/personal guarantor is a stakeholder and he ought to have been summoned by the RP to explain and assist the CoC for smooth sailing of the resolution process. An outright rejection of the repayment plan is not envisaged by the Code. The rejection of the resolution plan proposed by the applicant and the CoC is arbitrary and unconscionable. Taking advantage of the fact that the BOI is holding a major percentage of voting share, it has acted unilaterally and even without discussion to reject the repayment plan. The BOI, by its haste and unwarranted conduct forced the debt to become NPA and caused irreparable and irrevocable damage to the prospects of and industry promoted by the Personal Guarantor, as its very inception. When the 2nd Respondent made proposal for One Time Settlement (OTS), the 1st Respondent agreed for the proposal and made the 2nd Respondent to pay upfront payment of a sum of One Crore as a condition precedent which was complied with by the 2nd Respondent. However, the 1st Respondent had rejected the OTS proposal for Rs.24 Crores made by the Debtor and appropriated the sum of One Crore towards outstanding debt instead of keeping it in 'no lien' account. Having rejected the proposal the bank itself advised the debtor again to make a fresh OTS proposal for Rs.21 Crores and under the pretext got a sum of Rs.68 lakhs deposited by the 2nd Respondent, on the promise that it would be kept in no lien account. Strangely, that proposal was also rejected and the bank had appropriated the entire upfront deposit of Rs.1.68 crores towards the outstanding, contrary to the conditions on which the deposit was made by the debtor

and even without sanctioning the OTS. The 2nd Respondent approached for OTS vide letter dated which was approved by 1st respondent bank on 31.12.2018 and the same was informed to the 2nd Respondent on 31.12.2018" . In fact there was no approval of OTS either on 31.12.2018 or any other date subsequent thereto. The BOI, on the only ground that it happened to be the majority voting rights' holder rejected the repayment plan, without considering the fact there was no possibility of resolution in a meaningful way. It ought to have either accepted the repayment plan as a resolution or it ought to have called the 2nd Respondent for discussion or for modification of the plan submitted by him. The fact that the repayment plan is workable is evident from the Report of the RP. In the repayment plan proposed by the Debtor for the collateral guarantees also, provision is there to clear them. The 1st Respondent creditor did not accord any reason why the plan was rejected. Having most of the fault on its part, the BOI could have exercised its commercial wisdom in a way to resolve the issue by accepting its repayment plan as a sort of resolution of the insolvency. No opportunity was given to the 2nd Respondent to explain or modify or amend the repayment plan. The Bank of India had not taken into account or considered the contents of the report of the Resolution Professional which had explained in detail why the repayment plan submitted by the 2nd Respondent is acceptable. Furthermore, no other alternative suggestion was made by the CoC to resolve the Corporate Insolvency and considering that the application filed by the Applicant/RP to order closure of CIRP and discharge him is without

achieving any meaningful resolution in the matter. In view of the above, the Application was sought to be dismissed.

4. Heard. The counsel appearing for the RP submits that the repayment plan given by the Personal Guarantor was rejected by the CoC. She submits that the debt due is Rs.106 crores and the repayment plan was only for Rs.2.4 crores. When the RP was questioned as to the value of the assets of the Personal Guarantor, in order to see assets whether the repayment plan is commensurate with the assets of the Personal Guarantor, she submits that an OTS proposal was given by the PG for Rs.24 Crores. The counsel for the PG does not refute the submission with regard to the OTS proposal being given for Rs.24 Crores. The argument of the counsel for the PG is that the repayment plan was not put for discussion before the CoC and the minutes of the CoC do not reflect that the repayment plan was considered. The Counsel appearing for the RP submits that it is very clear from the CoC minutes that the repayment plan was forwarded to the Head Office and the Head Office has rejected the repayment plan. Be that as it may, on the face of it, from the fact that OTS for Rs.24 Crores was given, the repayment plan submitted by the PG cannot be accepted as it is far below the OTS amount and very far from the debts.

5. The counsel for the Applicant relied on section 114 of the Insolvency and Bankruptcy Code, 2016 which is extracted hereunder for ready reference:

> *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.*

Hence the rejection of the repayment plan by the CoC can be upheld and creditors are at liberty to apply for the Bankruptcy Order under Chapter IV.

6. In view of the facts stated in the Application, IA(IBC)/58/2022 is allowed and the report that the resolution process has concluded is taken on record. Consequently the Applicant/RP is discharged from his duties.

Accordingly, IA(IBC)/58/2022 in CP (IB)/217/94/AMR/2019 is disposed of.

Sd/- Dated 17.03.2023

**JUSTICE TELAPROLU RAJANI**
**MEMBER JUDICIAL**

***Swamy Naidu***