

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 302
IB-413/ND/2022
IA-4186/2022, New IA- 1464/2024

IN THE MATTER OF:
Karur Vysya Bank

... **Applicant/Petitioner**

Versus

Mr. Akash Goyal

... **Respondent**

Under Section: 95 of IBC, 2016

Order delivered on 03.04.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Vijay Kumar

For the Respondent :

For the RP : Adv. Vinod Chaurasia, CA Roshan Lal

HYBRID HEARING (PHYSICAL & VC)

ORDER

IA- 1464/2024: The prayer made in the captioned application reads thus:-

- “1. Allow the present Application and take the present report u/s 106 of IBC on record;
2. Allow the Resolution Professional to conduct the meeting of creditors/claimants on 05/04/2024 in terms of section 106(2)(c) read with section 106(3).”

The Ld. Counsel appearing for the RP submitted that though no repayment plan has been received from the Personal Guarantor, but in terms of the provisions of Regulation 17A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 inserted by Notification No. IBBI/2023-24/GN/REG107 dated 31.01.2024, even in such cases where no repayment plan could be received within prescribed time period which is 21 days, the Resolution Professional shall notify the same in the meeting of creditors.

Para 18 of the Application wherein the Regulation 17A is quoted reads thus:

“18. Further, as per Regulation 17A of INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) REGULATIONS, 2019 Inserted by Notification No. IBBI/2023-24/GN/REG107, dated 31st January 2024 (w.e.f. 31.01.2024.)

17A. Meeting of the creditors.

The resolution professional shall place the repayment plan as mentioned under section 105 in a meeting of the creditors for its consideration. Provided that where no repayment plan has been received within such period as stipulated under section 106, the resolution professional shall notify the same in a meeting of creditors.”

As can be seen from proviso to Section 114 of IBC, 2016 in such cases where the meeting of creditors is not summoned, the Adjudication Authority shall pass an order on the basis of the Report prepared by the Resolution Professional under Section 106. The Section 114 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.

(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.”

It is seen from proviso to Section 106(2) of the IBC, 2016, that where the Resolution Professional recommend that the meeting of creditors is not required to be summoned, reasons for the same shall be provided.

The natural corollary of the **proviso** is to Section 114(1) of IBC, 2016, read with proviso to Section 106(2) of the code that this Adjudicating Authority would pass the order in terms of the provision of Section 114 read with Section 115 & 106 of IBC, 2016 only such cases where the meeting of the creditors is not summoned. In such situation, where the meeting of creditors is summoned, it may be difficult for this Adjudicating Authority to pass the order in terms of proviso to Section 114(1) of IBC, 2016 (supra).

In terms of the provisions of Regulation 17A (supra), it has been provided that even in such cases also where no repayment plan has been received within the period stipulated in Section 106, the Resolution Professional shall notify the same in the meeting of creditors. Naturally in terms of the Regulation, the Resolution Professional would be required to summon the meeting of creditors to notify the position that no repayment plan is received.

In the aforementioned factual/legal position, we find it appropriate to invite the attention of IBBI to proviso to Section 114(1) of IBC, 2016 and the Regulation 17A (ibid). The Report/view of the IBBI in the aforementioned backdrop may be brought on record before the next date of hearing, so that this Adjudicating Authority is in a position to take appropriate view in the captioned application. The RP undertakes to make a copy of this order available to IBBI.

List the matter on 10.04.2024.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)