



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

ITEM No. 412– IA/1035(AHM)2024
In
C.P.(IB)/169(AHM)2021

Order under Section 94 IBC

IN THE MATTER OF:

Subodh Kumar Jain Personal Guarantor of Eternal Motors
Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 29/08/2024

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 order. The order is pronounced in 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/1035(AHM) 2024
In
C.P. (IB)/169(AHM)2021**

In the matter of :

IA/1035(AHM) 2024

[Filed under Section 106 of the Insolvency and Bankruptcy Code, Read with Regulation 17A of the IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations 2019]

Mr. Ashish Anantray Shah

Resolution Professional for **Mr. Subodh Kumar Jain**
Personal Guarantor of **Eternal Motors Private Limited**
Having Office address at:
402, 'Shaival Plaza', Nr. Gujarat College
Inder Residency, Parimal Garden Road
Ellisbridge, Ahmedabad- 380 006

...Applicant

Order Pronounced On: 29.08.2024

CORAM:

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

Appearance:

For the Applicant/RP :Mr. Harshil Patel, Advocate
For the Respondent/PG :Mr. Ravi Pahwa, Advocate



ORDER
[Per: Bench]

1. This is an application filed by the Resolution Professional (hereinafter referred to as “**RP**”) of Mr. Subodh Kumar Jain being Personal Guarantor of Eternal Motors Private Limited under Section 106 of the Insolvency and Bankruptcy Code, read with Regulation 17A of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations 2019, for Personal Guarantor to Corporate Debtor) Regulations 2019, for submission of report of the Resolution Professional upon non-receipt of any Repayment Plan by the Personal Guarantor to the Corporate Debtor, seeking the following prayers:

1. *YOUR LORDSHIPS be pleased to taken on record Report of the Resolution Professional under Section 106 of the Insolvency and Bankruptcy Code, upon non-receipt of any Repayment Plan in the insolvency resolution process of Mr. Subodh Kumar Jain being Personal Guarantor of Eternal Motors Private Limited;*



2. *YOUR LORDSHIPS be pleased to pass appropriate orders granting liberty to the creditors of the personal guarantor to file an application for bankruptcy under Chapter IV of the Code;*
3. *YOUR LORDSHIPS be pleased to grant such other order as may be deemed fit for liquidation process of the Corporate Debtor;*

2. It is stated that vide order dated 05.10.2021, 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 13.09.2021.
3. It is stated that the public announcement was made by the RP as per provisions of IBC, 2016 on 11.03.2024 in the Economic Times, All Gujarat Edition, in English Language & Financial Express, all Gujarat Edition in Gujarati Language, newspaper inviting claims from stakeholders. 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:-



Sr No.	Name of Creditor	Category	Amount Claimed	Amount admitted	Voting %
1.	HDFC Bank Limited	Financial Creditor	3,31,70,478	3,31	8.34
2.	IndusInd Bank Limited		86,78,219	86,78,219	2.18
3.	Punjab National Bank		21,30,97,645	21,30,97,645	53.56
4.	State Bank of India		11,10,83,967	11,10.83,967	27.92
5.	Tata Capital Limited		3,18,23,353	3,18,23,353	8.00
	TOTAL	-	39,78,53,662	39,78,53,662	100

4. It is stated that in terms of Section 106 of the Code, the applicant being Resolution Professional is required to submit repayment plan along with report on such plan, as per Section 105 of the Code along with a report on such plan with this Hon'ble Tribunal within a period of twenty-one days from the last date of submission of claims under Section 102 of the Code. However, it is stated that the




applicant has made several communications with the personal guarantor. However, no repayment plan has been submitted by the personal guarantor. **Hence, it is stated that the present applicant has not received any repayment plan from the Personal Guarantor to the Corporate Debtor**

5. Accordingly, in terms of proviso to Regulation 17A of the IBBI Personal Insolvency Regulations, the Applicant called upon the First Meeting of the Creditors on 20.05.2024, and Second Meeting of the Creditors on 18.06.2024, wherein it was duly informed to all the creditors, that the Personal Guarantor has not submitted any repayment plan in terms of Section 105 of the Code.
6. Hence, the present Application is being filed under Section 106 of the Code, read with Regulation 17A of the Personal Insolvency Regulations, for submission of Report of the Resolution Professional upon non-receipt of any Repayment Plan in the Insolvency Resolution Process of Mr. Subodh Kumar Jain being Personal Guarantor of Eternal Motors Private Limited.



7. 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.
8. Vide an order dated 12.07.2024, Learned Counsel for the Personal Guarantor present in the Court accepted the notice and sought time to file response to the application. However, Personal Guarantor has not filed reply till date. Further, on 12.08.2024 Personal Guarantor again appeared through learned Counsel whose instance present proceedings has been initiated under Section 94 of the IB Code 2016. Leaned Counsel for the PG submitted that since the Personal Guarantor has no fund he has not given any repayment plan to the IRP appointed by this Tribunal. Hence, he requests that an appropriate order may be passed in the present application moved by the IRP / Applicant.
9. We have heard the respective counsels and perused the material on record.
10. 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.


11. 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.”

12. There is no material adduced before us, in terms of which the report may be nixed, rather it is an admitted position that no Repayment Plan was given by the Corporate Debtor in spite of given sufficient time. In view of above, this Tribunal is of the opinion that it is to be given a



similar effect of rejection of repayment plan and approve the report of RP.

13. 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.
14. 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

professional, issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan."

15. The creditor/s and debtor/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.

16. The RP stands discharged and he is entitled to claim IRP costs from the stakeholders.

17. 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.

18. The **IA/1035(AHM) 2024** stands disposed of accordingly.
No order as to cost.

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

VP

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)