



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

I.A. No. 3579 of 2024

**In
Company Petition No. (IB)- 337(ND)/2021**

IN THE MATTER OF:

State Bank of India

.... Applicant / Financial Creditor

Vs.

Raman Gupta

... Respondent/Personal Guarantor

AND IN THE MATTER OF

Vijender Sharma

... Applicant/Resolution Professional

Order Under Section 114(1) of Insolvency & Bankruptcy Code, 2016

ORDER PRONOUNCED ON: 30.07.2024

CORAM:

**CHIEF JUSTICE (Retd.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**



APPEARANCES:

For the : Mr. Ishwar Mohapatra, Adv.
Applicant/RP

ORDER

1. State Bank of India filed an application bearing C.P (IB) No. 337(PB)/2021 on 02.06.2021 under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (the Code) read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 for initiation of Insolvency Resolution Process against Mr. Raman Gupta, the Personal Guarantor of M/s. Metenere Limited (formerly Met Trade (India) Limited), the Corporate Debtor.
2. The instant application i.e I.A No. 3579 of 2024 has been filed by Mr. Vijender Sharma, the Resolution Professional (RP) of Mr. Raman Gupta, inter-alia seeking an order of this Adjudicating Authority to take on record the report of RP indicating that the Personal Guarantor failed to submit repayment plan, accordingly, the Insolvency Resolution Process of Mr. Raman Gupta be concluded and liberty be granted to the creditors in terms of Section 115(2) of the Code to move an application for bankruptcy under chapter IV and for seeking the following reliefs:



- i. To allow the present report to be taken on record, with respect to the decision taken by creditors in its 05th meeting held on 26.06.2024.
 - ii. To grant liberty to creditors in terms of sec-115(2) of IBC, 2016 to file an application for bankruptcy under chapter IV.
 - iii. Discharge the Resolution Professional from the charge of Resolution Professional of Ms. Kiran Gupta.
 - iv. Pass such other or further order / orders(s) as may be deemed fit and proper in facts and circumstances of the instant case.
3. Briefly stated, the facts of the present case as averred by the applicant are that Mr. Vijender Sharma ('applicant') having IBBI Registration No- IBBI/IPA-003/IP-N00003/2016-2017/10022 was appointed as the Resolution Professional of Mr. Raman Gupta, Personal Guarantor of M/s. Metenere Limited by this Adjudicating Authority under Section 97(5) vide order dated 21.01.2022 in C.P. No. (IB)/337/PB/2021.
4. The Resolution Professional filed his report dated 01.08.2021 under Section 99 of IBC, 2016 recommending admission of the application filed under Section 95 of the Code. The constitutional validity of the provisions of the Code relating to Personal Guarantors to Corporate Debtor as contained in Part III of the Code was challenged before the Hon'ble Supreme Court. Based on the judgment of the Hon'ble Supreme Court in a Batch of 384 petitions namely **WP (Civil No. 1281/2021) Dilip B Jiwrajka vs. Union Of India & Ors.** filed under Article 32 of the Constitution of India, delivered on 09.11.2023, the Report of the RP was taken up by this Adjudicating Authority. After giving an opportunity of hearing to the respondent Personal



Guarantor, this Adjudicating Authority vide order dated 01.03.2024 under Section 100(1) of code admitted the application and initiated the insolvency resolution process of the Personal Guarantor.

5. In compliance with Section 102 of the Code, a public announcement was made by the Resolution Professional on 03.03.2024 in Financial Express newspaper in English and Jansatta in Hindi edition. Pursuant to the Public Announcement, the RP received claims against the Personal Guarantor and, after perusal of documents, accepted the claims as follows:

S.No.	Name of the Creditors	Amount Claimed (in Rs.)	Amount (in Rs.) admitted by RP	Amount (in Rs.) Rejected	Security Interest*
(1)	(2)	(3)	(4)	(5)	(6)
1.	State Bank of India	11,69,37,87,061	11,69,37,87,061	-	NIL
2.	Bank of Baroda	7,76,19,95,653	5,10,56,21,722	2,65,63,73,932	NIL
3.	Canara Bank	4,45,08,70,427	4,45,08,70,427	-	NIL
4.	Indian Bank	49,03,14,588	48,80,84,436	22,30,152	NIL
5.	DBS Bank	1,25,24,57,078	1,23,78,12,580	1,46,44,497	NIL
6.	IDBI Bank Limited	5,46,30,70,623	5,46,28,58,623	2,12,000	NIL
7.	Bank of India	3,43,47,61,756	2,38,06,90,210	1,05,40,71,546	NIL
8.	Exim Bank	79,72,15,982	79,72,15,982	-	NIL
	TOTAL	35,34,44,73,168	31,61,69,41,042	3,72,75,32,127	

6. It is submitted that on 04.03.2024 the RP sent mail to Personal Guarantor intimating him about the commencement of his insolvency resolution process basis the order of this Adjudicating Authority dt. 01-03-2024. The RP vide aforesaid mail, also reminded the Personal Guarantor to provide the required documents as sought in its mail dated 23-07-2021 and to submit the repayment plan. The RP also mentioned to the Personal Guarantor that pursuant to provisions of the Code r/w allied Regulations, the RP is



duty bound to place the repayment plan before the Adjudicating Authority and before the creditors for modification and approval in a time bound manner, as per timelines laid down in the Code.

7. On 06.04.2024, the RP submitted its report to this Adjudicating Authority under Section-106 intimating that he has not received any repayment plan from the Personal Guarantor, the said report was taken on record by this Adjudicating Authority on 22.04.2024.
8. On 22.04.2024 Mr. Raman Gupta, requested the RP to adjourn the 1st meeting of creditors for the next four weeks so that he can submit the relevant documents to the RP. The 1st meeting of creditors was held on 30.04.2024 which was not attended by the Personal Guarantor though the minutes of said meeting was circulated to him by email dated 30.04.2024. During this meeting the creditors gave 3 weeks time to the Personal Guarantor to submit the required documents and repayment plan.
9. Thereafter the 2nd, 3rd, 4th and 5th meeting of creditors was held on 27.05.2024, 06.06.2024, 17.06.2024 and 26.06.2024 in which the Personal Guarantor did submit some information & documents to RP but no repayment plan was received by the RP.
10. In the 5th meeting of creditors dated 26.06.2024, the creditors mentioned that because no repayment plan was received from the personal guarantor despite giving him sufficient time, the RP can submit his report to the Adjudicating Authority u/s-112 of the code.

Analysis and Findings

11. We have heard Ld. Counsel for the applicant and perused the application. In the present case, the Personal Guarantor has failed to give a repayment plan in consultation with the RP which shall contain a proposal to the creditors for restructuring his debts or affairs in terms of Section 105 of the code.
12. We would now like to refer to Section 115 of the Code, which reads as follows:



115. Effect of order of Adjudicating Authority on repayment plan. -

(1) Where the Adjudicating Authority has approved the repayment plan under section 114, such repayment plan shall –

- (a) take effect as if proposed by the debtor in the meeting; and
- (b) be binding on creditors mentioned in the repayment plan and the debtor.

(2) Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.

(3) A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196.

13. As per Section 105 of the Code, the debtor/ Personal Guarantor shall prepare in consultation with the RP, a repayment plan, then as per Section 106, the RP shall submit the repayment plan along with his report on such plan to the Adjudicating Authority. After conducting the meeting of creditors on the repayment plan the RP shall prepare report of the meeting of creditors as per Section 112 and submit it to the Adjudicating Authority as per Section 113. The Adjudicating Authority may then pass an order under Section 114 either approving or rejecting the report. But in the case before us, in the absence of any repayment plan filed by the personal guarantor the supra procedure could not be carried out. The non-filing of repayment plan causes similar effect of rejection of repayment plan under section 114 as provided under section 115(2) of IBC 2016.
14. In these given circumstances, since the Personal Guarantor has not filed repayment plan in spite of giving sufficient time, I.A No 3579 of 2024 stands allowed and as provided under section 115(2) of IBC 2016, the debtor and creditors shall be entitled to file an application for bankruptcy under Chapter IV of the Code.



Order

15. IA No. 3579/2024 is allowed and **disposed of**.
16. The debtor and Creditors shall be entitled to file an application for bankruptcy under Part III, Chapter IV of the Code.
17. The Resolution Professional is discharged from the Insolvency Resolution Process of Personal Guarantor Mr. Raman Gupta
18. The Registry is directed to forward the copy of this order to the IBBI as provided under Section 115(3) of IBC, 2016
19. Certified copies of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

Sd/-

**(AVINASH K. SRIVASTAVA)
MEMBER, TECHNICAL**