

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT
CHENNAI**

(APPELLATE JURISDICTION)

**Company Appeal (AT) (CH) (Ins) No.123/2023
(IA Nos.419, 421 & 420/2023)**

In the matter of:

**Mr. Omkaram Venkata Ramana,
S/o. Kalyan Sundaram Omkaram,
Aged about 62 years,
R/o 18-3-96/C, Road No. 2,
Srihari Colony, Tirupati - 517 501.**

... Appellant

V

**Bank of India.
2nd Floor, Prabhat Towers,
Opp. SBI LHO, Chapel Road,
Gunfoundry, Hyderabad – 500 001.**

**Sreenivasa Rao Ravinuthala,
Erst while Resolution Professional for
Mr. Omkaram Venkata Ramana (Personal Guarantor),
Office at F26, Raghava Ratna Towers,
Chirag Ali Lane, Hyderabad – 500 001.**

...Respondents

Present :

For Appellant : Mr. Arjun Suresh, Advocate
For Respondents : Mr. R. Umasuthan, Advocate for R1
Ms. Sarvani Desiraju, Advocate for R2

**ORDER
(Hybrid Mode)**

[ORAL JUDGMENT: Justice Ashok Bhushan (Chairperson)]:-

01.04.2026:

Heard the Learned Counsel for the Appellant and the Learned Counsel appearing for Bank of India, as well as the Learned Counsel appearing for the erstwhile Corporate Debtor.

2. This Appeal has been filed being aggrieved against the order dated 17.03.2023, as passed by the Learned National Company Law Tribunal,

Amaravati Bench at Mangalagiri in IA(IBC) No.58/2022 in CP(IB) No.217/94/AMR/2019.

3. By the order impugned, the Learned Adjudicating Authority has accepted the report submitted by the Resolution Professional, thereby taking on record the decision of the meeting of creditors that was held on 31.03.2022, where the repayment plan submitted by the Appellant was rejected.

4. Brief facts are necessary to be noticed to decide the appeal, are that the Appellant was the promoter of the Nithin Group of Companies, which had availed loan facilities from Bank of India. The Appellant has also given a personal guarantee to the loans granted by the Bank of India. The proceedings under Section 94 of the I & B Code, 2016, by the Appellant was admitted by the Learned Adjudicating Authority on 02.12.2019. The Resolution Professional was appointed to convene the meeting of creditors, which was admitted on 14.12.2021. The Repayment Plan was submitted by the Appellant to the Resolution Professional, who placed the said Resolution Plan before the Committee of Creditors.

5. The Bank of India requested for adjournment on several occasions to obtain the approval or rejection of the plan by the authorities of the bank. On 31.03.2022, the meeting of creditors was held, where the Repayment Plan submitted by the Appellant was rejected. The Resolution Professional thereafter, is said to have submitted a report, which came to be accepted by the impugned order.

6. The Learned Counsel for the Appellant, while challenging the order, submits that in the repayment plan the Appellant had offered an amount of Rs.68.84 lakhs, which was more than the valuation of the assets of the Appellant, which was reflected as per the value provided by the Resolution Professional.

7. It is submitted that the Learned Adjudicating Authority committed an error in relying on a proposal given by the Appellant for Rs.24 crores, which was with regard to group companies, which was not a relevant factor to be taken cognizance of rejecting the repayment plan.

8. It is submitted by the Learned Counsel for the Appellant that, under Section 114 Sub-Section (3) of the I & B Code, 2016, the Learned Adjudicating Authority, has discretion vested with it to ask the creditors to reconsider the plan, which discretion has not been exercised in the present case as per the intention of the statute.

9. It is submitted that no reasons have been given by the Financial Creditor, Bank of India, for not accepting the repayment plan, where the repayment plan has offered a value more than the assets of the Appellant.

10. The counsel for the bank opposing the submission of the counsel for the Appellant contends that the standing dues of the bank are more than Rs.106 crores, and a decree has also been obtained from the DRT as against the Appellant and the Corporate Debtor. The Bank of India has 71.22% voting shares, and the Bank of India rejected the repayment plan, which amount could not have been

accepted of Rs.68 lakhs, for the dues, which bank admitted. It is submitted that the bank had duly considered the repayment plan and has not shown its intent or willingness to accept the plan, and by majority decision, was taken to reject the plan.

11. It is submitted that there is no error in the order of the Learned Adjudicating Authority accepting the report of the Resolution Professional, when the creditors have not accepted the repayment plan. The Learned Counsel for Resolution Professional submitted that although the Resolution Professional has been discharged, but the Repayment Plan submitted by the Appellant was placed before the Committee of Creditors, which came to be rejected by 71.22% voting shares. It is submitted that there is no error in the order passed by the Learned Adjudicating Authority.

12. We have considered the submissions of the Learned Counsel for the parties. In the proceedings under Section 94 of the I & B Code, 2016, which were initiated against the Appellant, admittedly it was regard to the dues, which were outstanding against the Appellant, were shown to be more than Rs.106 crores. The repayment plan, which was submitted by the Appellant, was for an amount of Rs.68.84 lakhs. The submissions, which have been pressed by the Learned Counsel for the Appellant are that the value of the assets of the Appellant is only Rs.36.93 lakhs, as assessed by the Resolution Professional, and the offer of Rs.68.84 lakhs, is rather much more than the value of the assets of the Appellant. Hence, the Repayment Plan submitted by the Appellant deserved acceptance.

13. The Learned Counsel for the Appellant has contended that by virtue of Section 114(3) of the I & B Code, 2016, the Learned Adjudicating Authority has discretion to direct for reconsideration of the plan, unlike Section 31 of the I & B Code, 2016. Section 114 of the I & B Code, which has come for consideration in this Company Appeal, provides as follows: -

“Section 114: Order of Adjudicating Authority on repayment plan.

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.”

14. When we look into the repayment plan, which was placed before the Committee of Creditors and was considered by the Committee of Creditors too after obtaining several adjournments. The minutes of the meeting of the creditors from 21.02.2022 till 31.03.2022 have been brought on the record of the Appeal at page 165 of the paper book. The process of personal guarantors was placed before

the Resolution Professional, before the Committee, and decision was also shown to have been taken on the Repayment Plan.

15. The bank had also communicated that, they are not relinquishing the security, and they had a claim of Rs.736.64 lakhs. The Resolution Professional, in its meeting, had noted that Bank of India had not voted for the Repayment Plan, which held the voting share of 71.22%. The repayment plan could not get the minimum required voting rights. Hence, the repayment plan proposed by the Appellant was rejected, which was the minutes report of proceedings that was considered by the Learned Adjudicating Authority as placed by the Resolution Professional.

16. Admittedly, the dues of the Bank of India as noted in the impugned order are more than Rs.106 crores. When the Appellant had offered a plan of Rs.68.84 lakhs, it was for the Bank of India, which was the creditor holding more than 71% voting share, was required to take its decision, and the Bank of India, after due deliberation, had taken the decision not to accept the plan.

17. The submissions of the Learned Counsel for the Appellant, while relying upon the provisions contained under Section 114(3) of the I & B Code, 2016, that is need to be considered, what is submitted that the Learned Adjudicating Authority, has discretion vested in it to direct the modification of the repayment plan under Section 114(3) of the I & B Code, 2016, no doubt the provisions do give the discretion to the Learned Adjudicating Authority to direct the Resolution Professional to reconvene the meeting of the creditor for

reconstitution of the Resolution Plan, but the said provision is hedged of the expression, “where the Adjudicating Authorities of the opinion that the Repayment Plan requires modification”, that satisfaction of the Adjudicating Authority that the Repayment Plan requires modification has to be arrived and unless there are sufficient material placed before it to indicate that the Learned Adjudicating Authority, the Repayment Plan is require modification, the said power can be exercised.

18. In the present case, when the gap in the Repayment Plan, that has been offered by the Appellant and the dues of the Bank is too wide, that is, the Repayment Plan is not even 1% of the dues of the Bank. We are of the view that it was not obligatory for the Learned Adjudicating Authority to direct reconsideration of the plan.

19. The submission of the Appellant that he was offering a value in the Repayment Plan, which is more than the said value of the Appellant that in itself cannot be a ground in all cases to direct for acceptance of Repayment Plan, when it is offered of the value of the assets, which Appellant has under all facts and circumstances including the debt due had to be looked into. No obligation can be cast on the Financial Creditor to accept the Resolution Plan, and unless the decision taken by the Financial Creditor is shown to be an arbitrary interference by the Learned Adjudicating Authority or this Tribunal is uncalled for.

20. Section 114(3) of the I & B Code, 2016, although it is an enabling provision for the Learned Adjudicating Authority to exercise its discretion but

there have to be circumstances apparent on the record to enable the Learned Adjudicating Authority to exercise such power.

21. The Learned Counsel for the Appellant lastly contended that the bank has always been taking action against the Appellant, and even the full disbursement was not made. The issues, which are sought to be raised by the Appellant regarding full disbursement not having been made and the bank having all these action taken against the Corporate Debtor and the Appellant. All issues which cannot be examined at the time and stage of submission of the report by the Resolution Professional for accepting the decision of the Committee of Creditors not to accept the Repayment Plan.

22. We are of the view that no grounds have been made out to interfere in the impugned order in the exercise of our Appellate Jurisdiction. Owing to the aforesaid reasons, the **Comp App (AT) (CH) (Ins) No.123/2023** would stand dismissed.

[Justice Ashok Bhushan]
(Chairperson)

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/MS/AK