IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI, HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA, HON'BLE TECHNICAL MEMBER

CP No. (IB)- 42/95(1)/JPR/2022

IN THE MATTER OF:

ASREC (INDIA) LIMITED

...Applicant

VERSUS

MR. YASH MORANI

...Respondent

MEMO OF PARTIES

ASREC (INDIA) LIMITED
Solitaire Corporate Park, Building No. 2, Unit No. 201-202A & 200-202B, Ground Floor, Andheri, Ghatkopar, Link Road, Chakala, Andheri(E), Mumbai- 400093

...Applicant

VERSUS

YASH MORANI
Guru Jambeshwar Nagar, Jaipur-302021 (Rajasthan)

...Respondent

FOR THE APPLICANT(S) : Usha Singh, Adv.

Order Pronounced On: 12.03.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present application was initially filed by *M/s Volkswagen Finance Pvt. Ltd.* under Section 95(1) of the Insolvency and Bankruptcy Code, 2016

Sd/- Sd/-

('IBC'/ '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. Subsequently, the debt was assigned to *ASREC (India) Pvt. Ltd.* Therefore, for the purpose of this application, it shall be considered that *ASREC (India) Pvt. Ltd.* is the Applicant in the present matter. The application was filed with a prayer to initiate Insolvency Resolution Process against *Mr. Yash Morani* ('Personal Guarantor'/ 'Respondent'). The Personal Guarantor has stood as Guarantor in respect of the loans availed by *Sreeyam Morani Rise Pvt. Ltd.* ('Corporate Debtor').

2. It is stated that the Personal Guarantor had executed a personal guarantee to secure the repayment of financial assistance availed by the Corporate Debtor from the Applicant/Creditor. Pursuant to default in repayment of debt by the Corporate Debtor, the personal guarantee of *Mr. Yash Morani* was invoked and accordingly, the Personal Guarantor was called upon to repay the debt of the Corporate Debtor, which it failed to repay.

3. It has been submitted that the loan was sanctioned to the Corporate Debtor vide *Sanction Letter Reference No. 2017-10130* with a credit facility of Rs. 10,00,00,000/- (Rs. Ten Crores only). A facility agreement dated 24.03.2017 was executed with the Corporate Debtor for a facility limit of Rs. 6,00,00,000/- (Rs. Six Crores Only) and Ad-hoc facility limit of Rs. 2,00,00,000/- (Rs. Two Crores Only) at a floating rate of interest at 11.50%

Sd/- Sd/-

per annum. In pursuant to the Facility Agreement, a deed of hypothecation was executed for an amount of Rs. 8,00,00,000/- (Rs. Eight Crores Only).

4. Again on 23.10.2018, a facility agreement was executed by the Corporate Debtor for a facility limit of Rs. 1,00,00,000/- (Rs. One Crore Only) and Ad-hoc facility limit of Rs. 1,00,00,000/- (Rs. One Crore Only) at a floating rate of interest at 11.50% per annum. A deed of personal guarantee was also executed by the Personal Guarantor i.e. *Mr. Yash Morani* in favour of the Applicant.

5. A legal notice was issued to the Corporate Debtor recalling the loan amount and terminating the said Facility Agreements. Further, the Corporate Debtor was called upon to pay Rs. 6,64,27,711.46/- (Rupees Six Crores Sixty-Four Lakhs Twenty-Seven Thousand Seven Hundred Eleven and Forty-Six Paisa Only) as on 15.04.2019. The Applicant has also issued demand notice dated 15.01.2022 under Form B as prescribed under IBC, 2016. However, no reply was received.

6. In Part III of the Application, the total debt reflected is Rs. 5,20,67,814/- (Rupees Five Crore Twenty Lakhs Sixty- Seven Thousand Eight Hundred and Fourteen Only) as on 04.03.2022. The date on which debt became due is 15.04.2019.

7. We have heard the learned counsel for the Applicant and perused the Application along with the documents on record.

Sd/- Sd/-

8. It is observed that the Personal Guarantor has defaulted in payment of the dues within the statutory period from the service of the demand notice dated 15.01.2022. Consequently, the Applicant has filed this application under Section 95(1) of the Code read with Rule 7(2) of the IBC Rules, 2019 against *Mr. Yash Morani*, the Personal Guarantor of the Corporate Debtor. Hence, we are inclined to allow this Application and appoint the Resolution Professional as envisaged under Section 97 of the Code.

9. It is clear that from the date of filing of this application i.e., 25.04.2022, that Interim Moratorium commences as stipulated under Section 96(1) of the Code in relation to all the debts of the Personal Guarantor. During the Interim Moratorium period: (i) any pending legal action or proceedings in respect of any debt shall be deemed to have been stayed; and (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt. As per Section 96(3) of the Code, the provisions of sub-section 96(1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

10. It shall be noted that the appointment of the Resolution Professional under Section 97 of the Code is critical and essential for the Creditor but also relevant to safeguard the assets of the Personal Guarantor in terms of the provisions of the Code. The Applicant has nominated *Mr. Kamal Agarwal* as Resolution Professional. In view of this, *Mr. Kamal Agarwal* duly registered with the Insolvency and Bankruptcy Board of India, with

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Registration No. IBBI/IPA-001/IP-P00868/2017-18/11466 (email: advocate.kamal.aggl@gmail.com), is hereby appointed as the Resolution Professional.

11. The Applicant is directed to serve the copy of this order along with copy of the Application and documents immediately on the Insolvency and Bankruptcy Board of India and file proof of service including dispatch and delivery thereof. Also, a copy of this Order and Application shall be served on the Personal Guarantor for limited purpose of presence on the next date of hearing and to be informed about the commencement of moratorium. The Personal Guarantor is directed to co-operate with the Resolution Professional appointed hereunder and provide all relevant information to the concerned Resolution Professional. The Personal Guarantor shall also furnish a copy of his last 3 Income Tax Returns and latest statement of affairs including, but not limited to position of assets and liabilities together with relevant documents to the Resolution Professional.

12. The Resolution Professional is directed to exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. The Resolution Professional is directed to make the recommendations with reasons in writing for acceptance or rejection of this Application within the stipulated time as envisaged under the provisions of Section 99 of the Code. The Resolution Professional shall provide a copy of the report under sub-

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Section 7 of Section 99 to the Creditor as soon as the same is filed before this Authority.

13. The registry is directed to provide a copy of this order to the parties as well as mail the same to the Resolution Professional.

14. In the circumstances, prayer for appointment of RP stands allowed.

Sd/-

DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sd/-

RAJEEV MEHROTRA,
TECHNICAL MEMBER