

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

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

**SHRI VELAMUR G. VENKATA CHALAPATHY,  
HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 89/95/JPR/2024**

**IN THE MATTER OF:**

**STATE BANK OF INDIA**

**...Applicant**

**VERSUS**

**SHYAM SUNDAR SHARMA**

**...Respondent/ Personal Guarantor**

**MEMO OF PARTIES**

**STATE BANK OF INDIA**

Stressed Assets Recovery Branch (SARB)  
3<sup>rd</sup> Floor, Matrix Mall, Sector- 4,  
Jawahar Nagar, Jaipur- 302004  
(Rajasthan)

**...Applicant**

**VERSUS**

**MR. SHYAM SUNDAR SHARMA**

Co-operative Bank, Kherliganj, Atru,  
Distt. Baran, Rajasthan-325218

**...Respondent/ Personal Guarantor**

**FOR THE APPLICANT :** Shivangshu Naval, Adv.

Akanksha Noval, Adv.

**FOR THE RESPONDENT:** Prateek Kedawat, Adv.

**Order Pronounced On: 16.10.2024**

**ORDER**

**Per: Shri Velamur G. Venkata Chalapathy, Technical Member**

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**CP No. (IB)- 89/95/JPR/2024**



1. The present Application has been filed by *State Bank of India* ('SBI'/ 'Bank') with a prayer to initiate Insolvency Resolution Process against *Mr. Shyam Sundar Sharma* ('Personal Guarantor'/ 'Respondent'), under Section 95 of the Insolvency and Bankruptcy Code, 2016 ('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. The Personal Guarantor has stood as Guarantor in respect of the loans availed by *M/s Vimladevi Agro Tech 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. Shyam Sundar Sharma* was invoked and accordingly, the Personal Guarantor was called upon to repay the debt of the Corporate Debtor, which he has failed to repay.
3. In the year 2010, the Corporate Debtor through its authorised signatory namely, *Shri Chandra Mohan Singhal* approached the Bank for availing various credit facilities such as cash credit (hypothecation) limit, sub-limit against the book debts and term loan aggregating to Rs. 5,30,00,00/- (Rupees Five Crore Thirty Lakhs Only). It is submitted that *Shri Chandra Mohan Singhal*, one of the directors of the Corporate Debtor, was authorized *vide* board resolution dated 23.08.2010 to execute the loan documents on behalf

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of the Corporate Debtor and to further create security interest by way of equitable mortgage over the properties of the Corporate Debtor, in favour of SBI for availing the aforesaid loans and credit facilities.

4. Upon receipt of the loan application from the Corporate Debtor, the Bank sanctioned the credit facilities of Rs. 5,30,00,000/- (Rupees Five Crore Thirty Lakhs Only) to the Corporate Debtor *vide* Letter of Arrangement dated 21.08.2010. The Sanction Letter-I was duly executed between the Bank and the Corporate Debtor, wherein acknowledged the terms and conditions of the sanction of the Loan.
5. The credit facilities were secured by way of primary security being first charge over assets of the Corporate Debtor i.e., stock of soya bean, deoiled cake, crude oil, other consumables, book debts and other current assets of the Corporate Debtor, present and future as mentioned in Sanction Letter-I. In addition to the above, the credit facilities availed by the Corporate Debtor were secured by collateral securities by way of equitable mortgage of the properties mentioned hereunder:

- I. *Factory Land admeasuring 1.25 hectares and building situated at Khasra No. 168, Village Polai Kalan, NH-76, Tehsil Digod, District-Kota (Rajasthan) in the name of the Corporate Debtor.*
- II. *Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Giriraj Kumar.*
- III. *Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Chandra Prakash Singhal.*
- IV. *Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Mrs. Gayatri Devi.*

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- V. Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Ramavtar, Sh. Shyam Sunder, Sh. Om Prakash and Sh. Lokesh Sharma
- VI. Residential Property at Khasra No. 277, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Giriraj Kumar.
- VII. Shop No. 11 and 12, situated near Bharat Vikas Parishad Hospital, Kota (Rajasthan) belonging to Sh. Varun Gupta, and Smt. Radha Agarwal.
- VIII. Residential House at 45, Basant Vihar Spl. Kota (Rajasthan) belonging to Sh. Bitthal Agarwal.
6. The aforesaid mortgagors also executed separate letters of confirmation dated 04.09.2010 for creation of mortgage by deposit of title deeds in favour of the Bank. It is further submitted that besides extending the aforesaid mortgaged properties as collateral securities, the Credit Facilities were also secured over entire fixed assets of the Corporate Debtor net block of Rs. 5,49,39,000/- (Rupees Five Crores Forty- Nine Lakhs Thirty- Nine Thousand Only) including the land and building.
7. In pursuance of the Sanction Letter-I, the Corporate Debtor also executed an Agreement of Loan cum Hypothecation dated 31.08.2010 for a sum of Rs. 5,30,00,000/- (Rupees Five Crore Thirty Lakhs Only) plus interest at contractual rates. The said credit facilities are as follows:

| <b>S. No.</b> | <b>Credit Limit</b> | <b>Amount (In Lakhs)</b> |
|---------------|---------------------|--------------------------|
| 1             | Cash Credit (Hyp.)  | 300.00                   |
| 2             | Term Loan- I        | 230.00                   |
|               | <b>Total</b>        | <b>530.00</b>            |
| 1.            | <i>Ad hoc limit</i> | Rs. 1,25,00,000/-        |

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8. Further, in pursuance of the Sanction Letter I and Agreement of Loan- Cum- Hypothecation dated 31.08.2010, a guarantee agreement dated 31.08.2010 was also executed between the Bank and the Personal Guarantors i.e., *Sh. Chandra Mohan Singhal, Sh. Bitthal Prasad Agarwal, Sh. Varun Gupta, Smt. Gayatri Devi, Sh. Giriraj Kumar Singhal, Smt. Radha Agarwal, Sh. Om Prakash Sharma, Sh. Lokesh Kumar Sharma, Sh. Shyam Sunder Sharma and Sh. Ramavtar Sharma*, who stood as personal guarantors to the credit facilities availed by the Corporate Debtor. The Guarantors extended their personal guarantee to secure the credit facilities availed by the Corporate Debtor of Rs. 5,30,00,000/- (Rupees Five Crore Thirty Lakhs Only) and undertook to be jointly and severally liable for repayment of the outstanding dues in respect of the credit facilities, if borrower defaults in repayment.
9. Subsequently, on 19.10.2010, the Corporate Debtor approached the Bank for availing of additional credit facilities i.e., ad hoc limit and term loan and further term loan. Pursuant to the aforesaid request of the Corporate Debtor, the Bank *vide* the Letter of Agreement dated 03.11.2010 had sanctioned the additional credit facility to the tune of Rs. 2,00,00,000/- (Rupees Two Crores Only) to the Corporate Debtor in the manner stated as under:

| <i>S. No.</i> | <i>Credit Limit</i>      | <i>Amount</i>            |
|---------------|--------------------------|--------------------------|
| 2.            | <i>Term Loan- II</i>     | <i>Rs. 75,00,000/-</i>   |
|               | <i>Ad Hoc Facilities</i> | <i>Rs. 2,00,00,000/-</i> |

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The revised total loan stood increased by Rs. 2,00,00,000/- (Rupees Two Crore Only) totalling to Rs. 7,30,00,000/- (Rupees Seven Crore Thirty Lakh Only).

10. In pursuance of the Sanction Letter II, the Corporate Debtor had signed and executed a Supplemental Agreement of loan cum hypothecation dated 12.11.2010. The credit facilities were secured by way of primary security being first charge over assets of the Corporate Debtor i.e., stock of soya bean, deoiled cake, crude oil, other consumables, book debts and other current assets of the Corporate Debtor, present and future as mentioned in Sanction Letter-I. In addition to the above, the credit facilities availed by the Corporate Debtor were secured by collateral securities by way of equitable mortgage of the properties mentioned hereunder:

- I. *Factory Land admeasuring 1.25 hectares and building situated at Khasra No. 168, Village Polai Kalan, NH-76, Tehsil Digod, District-Kota (Rajasthan) in the name of the Corporate Debtor.*
- II. *Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Giriraj Kumar.*
- III. *Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Chandra Prakash Singhal.*
- IV. *Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Mrs. Gayatri Devi.*
- V. *Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Ramavtar, Sh. Shyam Sunder, Sh. Om Prakash and Sh. Lokesh Sharma*
- VI. *Residential Property at Khasra No. 277, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Giriraj Kumar.*

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VII. *Shop No. 11 and 12, situated near Bharat Vikas Parishad Hospital, Kota (Rajasthan) belonging to Sh. Varun Gupta, and Smt. Radha Agarwal.*

VIII. *Residential House at 45, Basant Vihar Spl. Kota (Rajasthan) belonging to Sh. Bitthal Agarwal.*

11. The mortgagors further executed separate letter dated 12.11.2010 for confirmation of extension of mortgage by deposit of title deeds evidencing creation of mortgage by deposit of title deeds dated 12.11.2010 which is done earlier in favour of the Bank and confirmed that the original title deeds of the secured assets remain with the Bank to secure the enhancement of limit and/ or grant of additional limit amounting to Rs. 7,30,00,000/- (Rupees Seven Crores Thirty Lakhs Only). It is also submitted that besides extending the aforesaid mortgaged properties as collateral securities, the credit facilities were also secured by first hypothecation charge created over entire fixed assets of the Corporate Debtor, net block of Rs. 6,00,34,000/- (Rupees Six Crores Thirty- Four Thousand Only) including the land and building.

12. In pursuance of Sanction Letter II and supplemental agreement dated 12.11.2010, the guarantors being *Sh. Chandra Mohan Singhal, Sh. Bitthal Prasad Agarwal, Sh. Varun Gupta, Smt. Gayatri Devi, Sh. Giriraj Kumar Singhal, Smt. Radha Agarwal, Sh. Om Prakash Sharma, Sh. Lokesh Kumar Sharma, Sh. Shyam Sunder Sharma and Sh. Ramavtar Sharma* executed another Guarantee Agreement dated 12.11.2010 extending their personal guarantees to secure the credit facilities to the tune of Rs. 7,30,00,000/-

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(Rupees Seven Crores Thirty Lakhs Only) availed by the Corporate Debtor and undertook to be jointly and severally liable for the dues repayable by the Corporate Debtor.

13. Further, the Guarantors also executed a link letter dated 12.11.2010 in favour of the Bank and confirmed the execution of various security documents mentioned under the Bank policy and practices on 31.08.2010 and confirmed to ratify all the transactions in the account of the Corporate Debtor prior to the date of execution of the documents mentioned therein for the credit facility of Rs. 7,30,00,000/- (Rupees Seven Crores Thirty Lakhs Only). Upon request of the Corporate Debtor, the Bank *vide* Letter of Agreement dated 29.11.2011 again sanctioned the credit facilities to the Corporate Debtor. The same are mentioned hereunder:

| <i>Credit Limit</i>  | <i>Amount</i>               |
|--|-----------------------------|
| <i>Cash Credit (Hyp)</i>                                       | <i>3,00,00,000/-</i>        |
| <i>Ad hoc Cash Credit</i>                                      | <i>1,00,00,000/-</i>        |
| <i>Sub Limited against book debts within overall (a) above</i> | <i>(1,50,00,000/-)</i>      |
| <i>Term Loan</i>   | <i>1,85,42,000/-</i>        |
| <i>STCL</i>  | <i>53,63,000/-</i>          |
| <b><i>Total</i></b>  | <b><i>6,39,05,000/-</i></b> |

14. Further, the Corporate Debtor executed a Supplemental Agreement of loan cum hypothecation dated 03.12.2011 for a sum of Rs. 6,39,05,000/- (Rupees Six Crores Thirty-Nine Lakh Five Thousand Only). In pursuance of the Sanction Letter III and supplemental agreement of loan cum hypothecation

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dated 03.12.2011, a guarantee agreement dated 03.12.2011 was executed between the Bank and the guarantors including the personal guarantor herein, namely *Sh. Brij Kishore Gupta, Sh. Chandra Mohan Singhal, Sh. Varun Gupta, Sh. Bitthal Prasad Agarwal, Smt. Gayatri Devi, Sh. Giriraj Kumar Singhal, Smt. Radha Agarwal, Sh. Om Prakash Sharma, Sh. Lokesh Kumar Sharma, Sh. Shyam Sunder Sharma, Sh. Ramavtar Sharma* and *Sh. Shreenath Gupta*. The guarantors extended their personal guarantee to secure the credit facilities availed by the Corporate Debtor of Rs. 639.05 Lakhs and undertook to be jointly and severally liable for the outstanding dues of the Bank if the Borrower fails to repay the loan amount.

15. Further, on 03.12.2011, *Sh. Brij Gupta Kishore, Sh. Chandra Mohan Singhal, Sh. Varun Gupta, Sh. Bitthal Prasad Agarwal, Smt. Gayatri Devi, Sh. Giriraj Kumar Singhal, Smt. Radha Agarwal, Sh. Om Prakash Sharma, Sh. Lokesh Kumar Sharma, Sh. Shyam Sunder Sharma, Sh. Ramavtar Sharma* and *Sh. Shreenath Gupta*, the personal guarantors *vide* undertaking dated 03.12.2011 confirmed availing of various credit facilities. The Credit Facilities availed by the Corporate Debtor were secured by collateral securities by way of equitable mortgage of the properties mentioned hereunder:

- I. *Factory Land admeasuring 1.25 hectares and building situated at Khasra No. 168, Village Polai Kalan, NH-76, Tehsil Digod, District-Kota (Rajasthan) in the name of the Corporate Debtor.*

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- II. Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Giriraj Kumar.
  - III. Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Chandra Prakash Singhal.
  - IV. Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Mrs. Gayatri Devi.
  - V. Residential Property i.e., part of Khasra No. 373, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Ramavtar, Sh. Shyam Sunder, Sh. Om Prakash and Sh. Lokesh Sharma
  - VI. Residential Property at Khasra No. 277, Kherliganj, Atru, Baran (Rajasthan), belonging to Sh. Giriraj Kumar.
  - VII. Shop No. 11 and 12, situated near Bharat Vikas Parishad Hospital, Kota (Rajasthan) belonging to Sh. Varun Gupta, and Smt. Radha Agarwal.
  - VIII. Residential House at 45, Basant Vihar Spl. Kota (Rajasthan) belonging to Sh. Bitthal Agarwal.
  - IX. Residential Land (converted from agricultural land) admeasuring 963.75 sq. metres (0.41 hectare) located at Khasra No. 195 at Village Bedykya Gram Panchayat Mermachah, Tehsil Atru, District Baran (Rajasthan), belonging to Sh. Chandra Mohan Singhal.
  - X. Residential Land (converted from agricultural land) admeasuring 949.75 sq. meters (0.41 hectare) located at Khasra No. 195 at Village Bedykya Gram Panchayat Mermachah, Tehsil Atru, District Baran (Rajasthan), belonging to Sh. Giriraj Kumar.
  - XI. Residential Land (converted from agricultural land) admeasuring 975 sq. metres (0.41 hectare) located at Khasra No. 194 at Village Bedykya Gram Panchayat Mermachah, Tehsil Atru, District Baran (Rajasthan), belonging to Sh. Bitthal Agarwal.
  - XII. House at Kumharon ka Mohalla in Rajpura Ward, Baran (Rajasthan), belonging to Sh. Shrinath.

16. The mortgagors signed and executed the letters confirming the extension/creation of mortgage by deposit of title deeds covering enhanced limit and additional facilities of their respective mortgaged properties all dated 03.12.2011. However, despite the Bank having sanctioned and

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disbursed the aforesaid credit facilities as per the requirements of the Corporate Debtor from time to time, the Corporate Debtor failed to maintain financial discipline in relation to the credit facilities by failing to pay the regular EMIs as per the terms and conditions of the Sanction Letters in the respective loan agreements.

17. On 29.11.2013, the Bank issued a Recall Notice to the Corporate Debtor, demanding the outstanding debt of Rs. 4,51,97,587/- (Rupees Four Crore Fifty- One Lakhs Ninety-Seven Thousand Five Hundred and Eighty-Seven Only) due and payable to the Bank. Owing to the aforesaid, failure to repay on part of the Corporate Debtor, the Bank issued a Demand Notice dated 02.12.2013 under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor as well as to the guarantors. However, the Corporate Debtor failed to repay its outstanding dues even after the lapse of the statutory period of 60 days. Thereafter, the Bank was constrained to issue a possession notice dated 08.02.2014 under Section 13(4) of the SARFAESI Act to the Corporate Debtor and Guarantors. Thereafter, the symbolic possession of the Mortgaged Properties was taken by the Bank on 25.02.2014.

18. In 2014, the Bank filed an Original Application under Section 19(1) of the Recovery of Debts and Bankruptcy Act, 1993 bearing no. 283/2014 before the Ld. DRT, Jaipur, against the Corporate Debtor for recovery of its dues of Rs. 5,25,43,204.86/- (Rupees Five Crore Twenty-Five Lakh Forty-Three

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Thousand Two Hundred Four and Eighty-Six Paisa Only) plus interest. Subsequently, the Ld. DRT *vide* its order dated 27.06.2019 issued a Recovery Certificate dated 27.06.2019 bearing RC No. 524/ 2019 against the Corporate Debtor and the Guarantors for a sum of Rs. 5,25,43,204.86/- (Rupees Five Crore Twenty-Five Lakh Forty-Three Thousand Two Hundred Four and Eighty-Six Paisa Only). The same is pending adjudication before the Ld. Recovery Officer-II, DRT, Jaipur.

19. Thereafter, a One Time Settlement (OTS) was conveyed to the Corporate Debtor by the Bank *vide* its letter dated 27.08.2019 pursuant to an OTS scheme, being offering to settle the matter for a sum of Rs. 3,27,92,027/- (Rupees Three Crore Twenty-Seven Lakh Ninety-Two Thousand Twenty-Seven Only). The Corporate Debtor showed its willingness to accept the said OTS *vide* its letter dated 23.09.2019. Thereafter, an OTS letter outlining the terms of the OTS were conveyed to the Corporate Debtor by the Bank *vide* its letter dated 30.09.2019 which was acknowledged and agreed to by the Corporate Debtor. It is pertinent to state that the acknowledgement of debt by the Corporate Debtor (Borrower) is binding on the personal guarantors as mentioned in clause 13 of the guarantee agreement dated 03.12.2011. The due amount from the Corporate Debtor constitutes a financial debt for purposes of Section 5 (8) of IBC, 2016 and the Corporate Debtor has committed default in repayment of the said financial debt.

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20. However, the Corporate Debtor did not comply with the same and hence the OTS stood frustrated as evident from the letter dated 01.11.2019 issued by the Bank. Due to default in repayment of the financial debt by the Corporate Debtor, the Bank has filed the instant Application for initiation of Insolvency Resolution Process against the Guarantor under section 95 (1) of IBC, 2016. The Bank has invoked the personal guarantee and issued Demand Notice to the Respondent on 07.06.2024 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The Demand Notice under section 95(4)b of the IBC, 2016 read with Rule 7(1) of the Insolvency and Bankruptcy (Application for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 dated 07.06.2024 was delivered to the Personal Guarantor on 10.06.2024.
21. The Personal Guarantor neither made any payment nor replied to the demand notice dated 07.06.2024. Therefore, the Bank has filed present Application to initiate the CIRP under Section 95 (1) of the IBC, 2016.
22. Further, it is submitted the instant Application is filed well within the limitation period as the Recovery Certificate is in favour of the Bank was issued on 27.06.2019. In view of order dated 23.09.2021 passed by the Hon'ble Supreme Court in M.A. No. 665/2021 in SMC (C) No. 3 of 2020

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(Cognizance for extension of limitation) and OTS submitted by the Corporate Debtor, the present application is within the period of limitation.

23. In Part III of the Application, the amount in default reflected is Rs. 5,25,43,204.86/- (Rupees Five Crores Twenty- Five Lakhs Forty- Three Thousand Two Hundred Four and Eighty- Six Paisa Only) with future interest @10% as per Recovery Certificate dated 27.06.2019 issued by the Ld. DRT, Jaipur in Original Application No. 283/2014. The date on which the debt became due is 27.06.2019.
24. We have heard the learned counsels for the parties and perused the Application along with the documents on record.
25. In the instant case, in so far as the submission of the Applicant qua the filing of the instant Application within the prescribed period of limitation is concerned it is apposite to refer to the Judgment of the Hon'ble NCLAT in the case of *Mr. CL Sharma v/s Bank of Maharashtra & Anr (2024)* [ibclaw.in](https://ibclaw.in) 141 NCLAT wherein the Hon'ble Appellate Authority observed that: -

*"11. The law declared by the Hon'ble Supreme Court in the above judgment is very clear. The Adjudicating Authority should consider the issue pertaining to jurisdictional fact at the stage of Section 100 and there is no adjudication contemplated at the stage when RP is appointed under Section 97, sub-section (5). The conclusion recorded in paragraph 86 (iii) clearly lays down the aforesaid. The submission of the Appellant(s) that Applications were barred by time, ought to have been considered at the time when Adjudicating Authority appointed the RP, thus, cannot be accepted.*

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15. *In view of the judgment of the Hon'ble Supreme Court in Diliip B Jiwrjka, it is settled now that question of adjudication of issues between the parties arises only at the stage of Section 100 and the RP has only role of facilitator. The RP has to submit a Report, after examining the Application under Section 95 and after giving opportunity to Personal Guarantor. The role of RP has been elaborately examined by the Hon'ble Supreme Court in the aforesaid case and it is held that RP does not perform any adjudicatory function, nor even can take an administrative decision. The role of RP has been held to be only facilitator. The judgment relied by learned Senior Counsel for the Appellant in Shankarlal Aggarwala has no application in the facts of the present case.*

16. *Insofar as the submission of the Appellant(s) that Adjudicating Authority failed to take into consideration that authorization was not filed by the RP, it is always open for the Appellant to take such or other pleas as permissible at the time of adjudication of issue, including any defect in the Application under Section 95 and the said question also does not require any consideration at the stage when RP is appointed. Of course, if there is any invalidity or shortcomings while appointing the RP, Section 98 is there for the debtor or creditor, which provides for replacement of the RP."*

26. In view of the aforementioned Judgments, this Adjudicatory Authority is of the opinion that no adjudication is contemplated at the stage when RP is appointed under Section 97 of the Code and question of adjudication of issues of limitation will be considered only at the stage of Section 100.
27. Further, 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. Consequently, the Applicant has filed this application under Section 95 of the Code read with Rule 7(2) of the IBC Rules, 2019 against *Mr. Shyam Sundar Sharma*, the Personal Guarantor of the Corporate Debtor. Hence, we

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are inclined to allow this Application and appoint the Resolution Professional as envisaged under Section 97 of the Code.

28. In the instant case, the Applicant has nominated *Mr. Jai Prakash Rawat* as Resolution Professional. 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. In view of this, *Mr. Jai Prakash Rawat* duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-001/IP-P-01969/2020-2021/13039 (email: ipjprawat@gmail.com), is hereby appointed as the Resolution Professional.
29. It is clear that from the date of filing of this application i.e., 27.08.2024, 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.
30. The Applicant is directed to serve the copy of this order along with copy of the Application and documents immediately on the Insolvency and

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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.

31. 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-Section 7 of Section 99 to the Creditor as soon as the same is filed before this Authority.
32. Further, the Applicant is directed to deposit Rs. 1,00,000/- (Rupees One Lakh Only) to the bank account of the Resolution Professional within one week, towards his fees. This shall be subject to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

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

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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

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**VELAMUR G. VENKATA CHALAPATHY,  
TECHNICAL MEMBER**