IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

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

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

Company Petition No. (IB)-03/94/JPR/2022

IN THE MATTER OF SECTION *94 of The Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019*

IN THE MATTER OF:

Abhinav Choudhari
S/o Shripal Choudhari,
R/o 4, Mahaveer Colony,
EVK Sampat Road,
Chennai-600007 (Tamil Nadu)

…Applicant/Guarantor

For the Applicant : Amol Vyas, Adv.
Anubha Singh, Adv.

Order Pronounced On: 24.05.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Petition numbered as CP No. (IB) 03/94/JPR/2022 is filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 ('The Code/IBC') read with Rule 6 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 ('Rules') by the Applicant/ Debtor Mr. Abhinav Choudhary. The prayer made is to initiate the insolvency resolution process in respect of Mr. Abhinav Choudhary, being the Personal Guarantor for M/s Emgee Cables & Communications Pvt. Ltd. ('Corporate Debtor').

2. The Applicant has submitted that a loan was advanced to the Corporate Debtor by Dena Bank, Edelwiess Retail Finance Ltd. & Small Industries Development Bank of India ('SIDBI'). Thereafter, pursuant to the default of the Corporate Debtor, the present applicant received a notice dated 28.05.2018 under section 13(2) of the SARFAESI Act, 2002 issued by the Dena Bank, Panch Batti, MI Road, Jaipur Branch seeking invocation of the personal guarantee given by the applicant.

3. It is pertinent to note that this Adjudicating Authority *vide* Order dated 27.07.2018 admitted an application under Section 9 of the Code seeking Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor in the matter of *(IB)-601(ND)/2018* title as *M/s Packwell (India) Pvt. Ltd. vs. Emgee Cables and Communications Limited*. Thereafter, the Committee of Creditors ('CoC') unanimously passed a resolution to liquidate the Corporate Debtor. Hence, this Tribunal vide Order dated

18.09.2019 directed the liquidation of the Corporate Debtor and appointed Mr. Suresh Chand Garg, Resolution Professional, holding Registration No. IBBI/IPA-001/IP-P00489/2017-18/10877 as the Liquidator.

4. It is clear that the applicant has failed in fulfilling his obligations pursuant to the personal guarantee given to the corporate debtors within 60 days from the date of receipt of the said notice under section 13(2) of SARFAESI as a result of which the applicant is a debtor in default and is accordingly eligible to file the instant application under the provisions of section 94(1) of the Insolvency and Bankruptcy Code, 2016, read in consonance with the applicable rules under the insolvency and bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.

5. It is seen that the Applicant in Part III of the application has mentioned the amount of default to be Rs. 48,39,49,100/- (Rupees Forty-Eight Crores Thirty-Nine Lacs Forty-Nine Thousand and One hundred only) and the date of default as 31.03.2018.

6. The Application has been filed in respect of debts which are not excluded debts as enumerated under Section 79(15)(e) of the Code. It is noted that no application under Chapter III of Part III of the Code has been admitted before this Adjudicating Authority in respect of the Applicant/Debtor

during twelve months preceding the date of submission of the instant Application. The Applicant has filed an affidavit stating that he is not barred in terms of Section 94(4) of the Code. The Application under consideration is in a Form-A format and accompanied with the required fees as prescribed and contains the required details. Thus, prima facie the requirements of Section 94 of the Code are fulfilled.

7. As stipulated under Section 96(1) of the Code interim moratorium commences from the date of filing of the Application under Section 94 or 95. Accordingly, in the instant matter interim moratorium commences from 04.01.2022 i.e., from the date of filing of the instant Application, concerning all the debts, and interim moratorium shall cease to have effect from the date of admission of the Application. During the interim-moratorium period- (i) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and (ii) the creditors of the Applicant/debtor shall not initiate any legal action or proceedings in respect of any debt. As per Section 96(3) of the Code, 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.

8. As per Rule 6(2) of the Rules, the Guarantor has served a copy of this application to every financial creditor and the corporate debtor for whom

the guarantor is a personal guarantor. It is seen that the Guarantor has annexed proof of service to the creditors and Corporate Debtor in form of postal slips. In this respect, the Applicant had been directed to file an affidavit of service to the creditors and Corporate Debtor along with a tracking report, the same has been filed *vide* Diary No. 224/2022 dated 27.01.2022.

9. The Applicant has not nominated any Resolution Professional therefore, this Authority is hereby appointing Mr. Vishnu Upadhyay bearing Registration No. IBBI/IPA-003/IP-N000153/2018-2019/11843 with the e-mail address ipvishnu.upadhyay@gmail.com and phone number +91 981828505 as the RP in the present matter.

10. In this matter, the Resolution Professional appointed herein, Mr. Vishnu Upadhyay, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. He is directed to recheck availability of all information as per the relevant Rules & Forms. He is also directed to make 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 Applicant / Debtor, all the Financial Creditors and related

Corporate Debtors for whom the Applicant is a Personal Guarantor as soon as the same is filed before this Adjudicating Authority. The Applicant shall provide a copy of the Application, if not provided already, along with this order to IBBI for its records.

11. Copy of this order be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Resolution Professional by all modes for information.

12. The Registry is directed to immediately send a soft copy of the instant Application along with this order to the IRP nominated herein on his e-mail id.

13. In the circumstances, CP No. (IB) 03/94/JPR/2022 is admitted.

DEEP CHANDRA JOSHI
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Date: 2022.05.24 17:10:34 +05'30'

(Deep Chandra Joshi)
Judicial Member

RAGHU NAYYAR
Digitally signed by RAGHU NAYYAR
Date: 2022.05.24 17:11:32 +05'30'

(Raghu Nayyar)
Technical Member