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 (IB) No. 81/95/JPR/2022

IN THE MATTER OF:

STATE BANK OF INDIA

...Applicant/Creditor

VERSUS

SHRI RAJENDRA PRASAD MAHESHWARI

...Respondent

MEMO OF PARTIES

STATE BANK OF INDIA
Stressed Assets Management Branch- II, 11st Floor, STC Building, Jawahar Vyapar Bhawan, 1, Tolstoy Marg, Janpath New Delhi-110001 *through Shri Satyendra Prasad Khorania, Resolution Professional*

...Applicant/Creditor

VERSUS

SHRI RAJENDRA PRASAD MAHESHWARI
4th Floor, Central Building No. 2, 26 Bomanji Master Road, Opposite Kalba Debi Post Ofice, Mumbai-400002

...Respondent/Personal Guarantor

FOR THE PETITIONER(S) : Pramod Kumar, Adv.
FOR THE RESPONDENT(S) : Prabhansh Sharma, Adv.

Order Pronounced On: 30.11.2023

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ORDER

Per : Shri Rajeev Mehrotra, Technical Member

1. The present application is filed by *State Bank of India* ('Creditor'/ 'Applicant') with a prayer to initiate Insolvency Resolution Process against *Shri Rajendra Prasad Maheshwari* ('Personal Guarantor'/ 'Respondent'), through *Shri Satyendra P. Khorania*, Insolvency Resolution Professional ('IRP'), 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 the Guarantor in respect of the loans availed by *M/s Suzuki Textiles Ltd* ('Corporate Debtor').

2. It is stated that the Personal Guarantor 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 *Shri Rajendra Prasad Maheshwari*, being the personal guarantor was invoked and accordingly, the Personal Guarantor was called upon to repay the debt of the Corporate Debtor, which it failed to repay.

3. The account of the Corporate Debtor was declared as NPA on 02.06.2017 and in view thereof, the Creditor vide its notice under Section 13(2) of SARFAESI Act, 2002 dated 30.07.2019 called upon the Corporate Debtor

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and the Guarantors to repay the outstanding amount of Credit Facilities. The Corporate Debtor and its guarantors failed to repay the demand amount of Rs. 62.18 Crores. Therefore, a legal notice was served dated 28.11.2019 upon the Corporate Debtor and Guarantors to disburse its debt of Rs. 62.18 Crores due as on 31.03.2019 along with future interest till the date of actual payment. The Creditor also preferred an Original Application 517/2020 against the Corporate Debtor and its guarantors before the Debt Recovery Tribunal, Jaipur.

4. With respect to the Corporate Debtor, it is seen that on account of default in repayment of debt by the Corporate Debtor, the Operational Creditor namely *M/s Sangam (India) Ltd.* had filed an Application under Section 9 of the Code numbered as *CP(IB) No. 275/9/JPR/2019* against the Corporate Debtor which was admitted vide Order dated 31.01.2022. The present Creditor i.e., SBI filed its claim before the Resolution Professional wherein an amount of Rs. 77,23,67,465.17/- (Rupees Seventy-Seven Crores Twenty-Three Lakhs Sixty-Seven Thousand Four Hundred Sixty-Five and Seventeen Paise) was admitted as claim by the said Resolution Professional of the Corporate Debtor. Thereafter, the Committee of Creditors ('CoC') approved the Resolution Plan submitted by *M/s Sai Leela Synthetics Pvt. Ltd.* being the Successful Resolution Applicant ('SRA') which was subsequently approved by this Adjudicating Authority on 18.01.2023.

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5. It is seen that a Demand Notice dated 14.06.2022 under Section 95(4)(b) of the Code was issued by the Creditor to the Personal Guarantor in Form B as per Rule 7(1) of the Rules calling upon the Personal Guarantor to pay Rs. 80.78 Crores liability accruing pursuant to invocation of Guarantee executed in respect of the Corporate Debtor. The Demand Notice has been annexed as Annexure- 5 of the Application. The copy of this application is also stated to be served upon the Personal Guarantor and an Affidavit of Service has been filed vide Diary No. 150/2023 dated 18.01.2023.

6. In Part III of the Application, the total debt is reflected is Rs. 80,77,57,655.84/- (Rupees Eighty Crores Seventy-Seven Lakhs Fifty-Seven Thousand Six Hundred Fifty-Five and Eighty-Four Paise) as on 31.05.2022 and the date on which debt became due is 30.07.2019.

7. We have heard the learned counsel for the Applicant and perused the pleadings on record.

8. It is observed that the Personal Guarantor has defaulted in payment of the dues within the statutory period of 14 days from the service of the demand notice dated 14.06.2022. Consequently, the applicant has filed this application through *Shri Satyendra P. Khorania*, IRP under Section 95 of the Code read with Rule 7 of the IBC Rules, 2019 against *Shri Rajendra Prasad Maheshwari*, 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.

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9. It is clear that from the date of filing of this application i.e., 31.10.2022 by the Applicant, 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. Since the present application has been filed through the Resolution Professional, *Shri Satyendra P. Khorania*, bearing Registration No. IBBI/IPA-002/IP-N00002/2016-17/10002, this Bench confirms the appointment of the Resolution Professional in the matter.

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

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Sd-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. He 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. He 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.

13. List the matter for further proceedings in this case on 08.01.2024.

Sd~

DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sd~

RAJEEV MEHROTRA,
TECHNICAL MEMBER