



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI PRASANTA KUMAR MOHANTY
HON'BLE TECHNICAL MEMBER

IA(IBC) No. 310/JPR/2022
IA(IBC) No. 473/JPR/2022
CP No. (IB)- 39/94(1)/JPR/2022

Under 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:

MRS. JAI SHREE MISHRA

...Applicant

AND IN THE MATTER OF:
IA NO. 310/JPR/2022

MEMO OF PARTIES

MRS. JAI SHREE MISHRA

Through Resolution Professional

Mr. Prashant Sharma

S/o Mr. Prem Chand Sharma,

Office Address at 611, Arcade, 6th Floor, K-12,

Malviya Marg, C-Scheme, Jaipur, Rajasthan-302001

...Applicant

IA(IBC) No. 310/JPR/2022

IA(IBC) No. 473/JPR/2022

In Company Petition (IB) No. 39/94(1)/JPR/2022



AND IN THE MATTER OF:
IA No. 473/JPR/2022

MEMO OF PARTIES

MRS. JAI SHREE MISHRA

W/o Shri Subhash Chader Mishra,
House No. C-344, Talwandi, Kota,
Near D.A.V. School-324005.

..... Applicant/Personal Guarantor

VERSUS

IDFC FIRST BANK LIMITED
ERSTWHILE CAPITAL FIRST LTD.

R/o-K.R.M Tower 7th Floor No.1,
Harrington Road, Chetpet, Chennai &
Jaipur Office-5th Floor, Manupasana Tower,
Sardar Patel Marg, Near Chomu House Circle,
Jaipur-302002.

..... Respondent

For the Applicant : Nitesh Shrivastava, Adv.

For the RP : Prashant Sharma RP in Person

For the Bank : Sonal Singh, Adv.
Anubha Singh, Adv.
Pradeep Rajpurohit, Adv.
Abhishek Sharma, Adv.

For Respondent : Pramod Kumar, Adv.

Order Pronounced On: - 19.04.2023

**ORDER****Per: Shri Prasanta Kumar Mohanty, Technical Member**

1. The Applicant, namely Mrs. Jai Shree Mishra, has filed an Application bearing *CP No.(IB)-39/94(1)/JPR/2022*, which is under consideration before this Authority under Section 94 r/w Sections 96, 97, 99, and 100 of the Insolvency and Bankruptcy Code 2016 (the 'IBC' / 'Code') r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 ('Rules'), seeking initiation of Interim Resolution Process ('IRP') against the Applicant/ Debtor who is the Personal Guarantor of the Corporate Debtor, namely M/s Niroz Insulations Private Limited for an amount of Rs. 4,03,90,942/- (Rupees Four Crore Three Lakh Ninety Thousand Nine Hundred Forty-Two Only) in relation to the credit facility by the following Financial Creditor:

Sr. No.	Name of Financial Creditor	Debt in Default (In INR) as per Form A	Date of Default/Remark
1.	Kotak Mahindra bank	10,36,420/-	15.07.2020 (Date of Cheque Bounce)

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2.	Bajaj Finance Ltd.	4,20,000/-	29.03.2020 Default in repayment of EMI of March, 2020 onwards as per settlement amount
3.	HDB Financial Services Ltd.	18,56,279	15.01.2020, 23.10.2018
4.	State Bank of India	1,64,54,355	01.09.2020 (NPA)
5.	State Bank of India (Car Loan)	4,10,823	N.A.
6.	IDFC First Bank Ltd.	8,59,290	23.07.2019 (i.e. Notice invoking Arbitration)
7.	Bank of Baroda	18,18,555	Not Known
8.	India Bulls Ltd. (a)	38,43,230	25.10.2021
9.	India Bulls Ltd. (b)	1,36,91,990	27.05.2021
	Total Debt	4,03,90,942/-	

2. On presentation of the application by the Applicant, this Authority *vide* Order dated 24.06.2022 had appointed Mr. Prashant Sharma, bearing Registration No. IBBI/IPA-001/IP-P-00290/2017-2018/10534 as the Resolution Professional, to file a report under Section 99 of IBC, 2016 which has been filed by him through *IA(IBC)No.310/JPR/2022*.

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3. The Present Application bearing *IA(IBC)No.310/JPR/2022* has been filed by the Resolution Professional ('RP') under Section 99(1) read with Section 99(7) of the IBC recommending the admission of the application filed by the Creditor under Section 94 of the Code seeking commencement of Insolvency Resolution Process against the Debtor/Personal Guarantor, namely, Mrs. Jai Shree Mishra. The Resolution professional herein recommends acceptance of the said Application in accordance with Section 99(7) of IBC and the reasons for such recommendation as per Section 99(9) of IBC, 2016 are set forth as below:

- i. That the Applicant/Personal Guarantor Mrs. Jai Shree Mishra, (Personal Guarantor) in CP- (IB)-39/94(1)/JPR/2022 herein falls within the parameters of Section 94(1) of the Code of 2016 as Applicant/Personal Guarantor has committed default in repayment of her liabilities in terms of debt arising on account of invocation of personal guarantee given by Applicant/Personal Guarantor towards Corporate Debtor Niroz Insulations Private Limited and the liabilities remained unpaid and accordingly, the requirement set out in Rule 3(e) of PG Rules, 2019 is satisfied.
- ii. That the debtor has committed a default in payment of its liabilities and therefore, the requirement set out in section 94(1) of IBC is satisfied and the application has been filed in compliance with the



provisions of Section 94(3) of the Code of 2016 as the said application has been submitted only in respect of debts which are not excluded debts as enumerated under Section 79(15) of the Code.

- iii. That the Applicant/ Personal Guarantor does not fall under the prohibiting criteria mentioned under the provisions of Section 94(4) of the Code of 2016 and is entitled to file the said application under Section 94 of the Code of 2016 as the Applicant is:
 - a. Not an undischarged bankrupt;
 - b. Not undergoing a fresh start process;
 - c. Not undergoing an insolvency resolution process; or
 - d. Not undergoing a bankruptcy process.
- iv. That the Applicant/Personal Guarantor is entitled to file the said Application pursuant to the criterion envisaged under Section 94(5) of the Code of 2016 as no application under Chapter III of the Code of 2016 has been admitted in respect of the Applicant/Personal Guarantor during the period of twelve months preceding the date of submission of the said Application under Section 94 of the Code, 2016
- v. That the said Application has been filed by the Applicant/Personal Guarantor in compliance with Section 94(6) of the Code of 2016 in 'Form A' along with an application fee of Rs. 2,000/- as prescribed in



Rules of 2019 and in the manner as prescribed under Rule 6(1) of Rules of 2019.

- vi. That the application filed u/s 94(1) is accompanied with details and documents relating to:
- a) The debts owed by the Corporate Debtors (for whom the guarantee has been given by the personal guarantor) to creditors.
 - b) Relevant evidence of such default or non-repayment of debt.
- vii. That the Applicant/Personal Guarantor is not eligible under Section 80 for fresh start process provided under Chapter II of the Code of 2016.
4. The Financial Creditor i.e., State Bank of India filed its reply *vide*, Diary No. 2999/2022 dated 11.10.2022 wherein it is submitted that the Corporate Debtor has failed to repay the due of the Bank and its account classified as NPA on 01.09.2020. Thereafter notice under section 13(2) of the SARFAESI Act, 2002 has been sent to the Corporate Debtor on 24.05.2021. Further, it is stated that an Original Application bearing No. 556/2021 is also pending for recovery of a sum of Rs. 1,66,87,693.00 (Rupees One Crore Sixty-Six Lakh Eighty-Seven Thousand Six Hundred Ninety-Three Only) as on 27.09.2021.



5. The Financial Creditor i.e., IDFC First Bank has filed an IA (IBC) No. 473/JPR/2022 vide Diary No. 2894/2022 dated 30.09.2022 stating the objections that the IDFC First Bank has advanced a personal loan facility to Triveni Agrotraders Pvt. Ltd. vide loan document No. 13596602 on 18.11.2017 for an amount of Rs. 15,00,000/- (Rupees Fifteen Lakh Only) in which the Applicant Jai Shree Mishra stands as co-borrower and not as a guarantor. Further, it is stated that as per MCA notification under Section 94 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 is not applicable to the Applicant as the Applicant is not personal guarantor but co-borrower in the loan facility.
6. The compliance of the relevant sections of the Code is as follows:

<i>Sr. No.</i>	<i>Requirements under Relevant provisions of Section 99 of the Code</i>	<i>Compliance by RP</i>
i.	Section 99 (1): The RP shall examine the application referred u/s 94 or 95 within 10 days of appointment and submit a report to Adjudicating Authority for approval/rejection of the application	YES The RP submitted that the present report is prepared in compliance with the requirements of Section 99(1) of the Code
ii.	Section 99 (2):	Not Applicable

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	<p>Where the application has been filed under Section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing –</p> <p>a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;</p> <p>b) evidence of encashment of a cheque issued by the debtor; or</p> <p>a signed acknowledgment by the creditor accepting receipt of dues.</p>	
iii.	<p>Section 99(3):</p> <p>Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.</p>	Not Applicable
iv.	<p>Section 99(4):</p> <p>For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be</p>	<p>YES</p> <p>The Resolution Professional sought certain clarification/information from all the Financial Creditors through an E-mail dated 28.06.2022.</p> <p>Further RP also sought information from Personal Guarantor through E-mail dated 06.07.2022.</p>



	required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.	
v.	Section 99(5): The person from whom information or explanation is sought under subsection (4) shall furnish such information or explanation within seven days of receipt of the request.	YES E-mail received from the Applicant/Personal Guarantor through the counsel to the queries raised by the Resolution Professional through E-mail.
vi.	Section 99(6): The resolution professional shall examine the application and ascertain that - (a) the application satisfies the requirements set out in Section 94 or 95; (b) the applicant has provided information and given explanation sought by the resolution professional under subsection (4).	YES RP submitted that the present application satisfies the requirements of provisions of Section 94 as has been provided in detail hereinabove in this report.
vii.	Section 99(7): After examination of the application under subsection (6), he may recommend acceptance or rejection of the application in his report.	YES RP submitted that the present application satisfies the requirements of provisions of Section 94 as is required to be examined under Section 99(6) of the Code.



		The RP submitted that based on his examination the present application deserves to be admitted under Section 100 of the Code and this Hon'ble Authority may pass appropriate orders in this regard.
viii.	Section 99(8): Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under Section 94 be treated as an application under Section 81 by the Adjudicating Authority.	Not Applicable The RP submitted that the provisions of Section 99(8) of the Code does not apply to the present case on hand. Application is filed by the debtor under Section 94 of the code.
ix.	Section 99(9): The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	YES RP submitted that the present report is being presented under Section 99(7) of the Code to this Hon'ble NCLT with a recommendation of accepting the present application as the Personal Guarantor/debtor has not repaid the debt due to the Creditors.
x.	Section 99(10): The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.	YES RP submitted that he has complied with the requirement of filing a copy of this report prepared under Section 99(7) of the Code to the Creditor. Copy of the said email dated 08.07.2022 serving copy of the Report



	on the creditor is attached herewith at Pages No. 35
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7. From the report there does not appear any request of the Resolution Professional for issuance of the instructions for the purpose of conducting negotiations between the debtor and creditors for arriving at a repayment plan. Therefore, based on the reasons recorded in the report submitted by the Resolution Professional, the application i.e., *IA(IBC)No.310/JPR/2022* filed under the provisions of Section 94 of IBC is hereby admitted under Section 100 of the IBC.
8. Resultantly, Insolvency Resolution Process is initiated against Respondent/Personal Guarantor and a moratorium is declared, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC. During the moratorium period *inter-alia*, the following provisions shall be in effect;
- a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
 - b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
 - c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;



- d. The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
9. The Resolution Professional *viz.*, Mr. Prasant Sharma, who has been appointed under Section 97 *vide* order dated 24.06.2022, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be place by the Registry on our website and the other shall be affixed in the premises of this Authority.
10. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional.



The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims as provided under Section 106.

11. In case the resolution professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons therefor. If the resolution professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the report under subsection (1) of Section 106, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.
12. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on the repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the resolution professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC, 2016.



13. In terms of the above, *CP No. (IB)-39/94(1)/JPR/2022* filed under Section 94 of the IBC, is admitted and the Insolvency Resolution Process stands initiated against the said Debtor/Personal Guarantor *i.e.* Mrs. Jai Shree Mishra. Accordingly, *IA No. 310/JPR/2022* stands disposed off.
14. Further in the view of forgoing all the pending IAs in the present matter stands disposed off.

DEEP
CHANDRA
JOSHI

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by DEEP
CHANDRA JOSHI
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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANTA
KUMAR
MOHANTY

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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**