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)-96/94(1)/JPR/2021

IN THE MATTER OF SECTION 94(1) 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:

Suman Soni
Nath Nagar, 2 ND, Ajmer Road,
Kekri -(Rajasthan)

...Applicant/Personal Guarantor

For the Applicant : Anuroop Singhi,Adv.

Order Pronounced On:28.04.2022

ORDER

Per: Shri Deep Chand Joshi, Judicial Member

1. CP No. (IB) 96/94(1)/JPR/2021 is filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 ('Code') 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 Ms. Suman Soni.

 Sd/- Sd/-

The prayer made is to initiate the insolvency resolution process in respect of Ms. Suman Soni, being the Personal Guarantor for G.P. Cottfab Pvt. Ltd. ('Corporate Debtor').

2. The Applicant has submitted that she is a guarantor pursuant to the Agreement of Guarantee dated 16.12.2017 whereby a loan was advanced to the Corporate Debtor by Punjab National Bank, Bhopalganj, Bhilwara. Thereafter, the Corporate Debtor defaulted in repayment of the said loan facility. Therefore, the present applicant received a notice dated 19.12.2018 under section 13(2) of the SARFAESI Act, 2002 issued by the Punjab National Bank, Bhopal Ganj, Bhilwara Branch seeking invocation of the personal guarantee given by the applicant.

3. It is pertinent to note that this Adjudicating Authority *vide* Order dated 12.09.2019 admitted an application under Section 9 of the Code seeking CIRP against the Corporate Debtor in the matter of CP No. (IB)-159/9/JPR/2020. Since no Resolution Plan was received by the Resolution Professional, the Committee of Creditors ('CoC') unanimously resolved to liquidate the Corporate Debtor. Subsequently, *vide* Order dated 02.03.2021, the Corporate Debtor was directed to be liquidated and as the Resolution Professional, i.e. Mr. Prashant Agarwal, did not file written consent in Form-AA, therefore, Mr. Jai Narayan Khandelwal was appointed as the Liquidator.

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4. It is clear that the applicant has failed in fulfilling her 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. 20,73,96,097.00 (Rupees Twenty Crores Seventy-Three Lacs Ninety-Six Thousand and Ninety-Seven only) and the date of default as 11.12.2018 i.e., date of Letter preferred by the Punjab National Bank to the Applicant recalling the payment of balance amount calculated upto 30.11.2018.

6. The Application has been filed in respect of debts which are not excluded debts as enumerated under Section 79(15) 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 she is not barred in terms of Section 94(4) of the Code. The Application under

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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 16.12.2021 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

Sd- Sdtracking report, the same has been filed *vide* Diary No. 234/2022 dated 27.01.2022.

9. The Consent Form to Act of Ms. Garima Diggiwal to act as a Resolution Professional has been filed vide Diary No. 398/2022 dated 11.02.2022, we find no objections to the same. Therefore, the bench is appointing Ms. Garima Diggiwal bearing Registration No. IBBI/IPA-001/IP-P02018/2020-21/13158 with the e-mail address garima286@gmail.com and phone number +91-9636655600 as the RP in the present matter.

10. In this matter, the Resolution Professional appointed herein, Ms. Garima Diggiwal, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. She is directed to recheck availability of all information as per the relevant Rules & Forms. She 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.

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11. Copy of this order be supplied to the Applicant. The Applicant and her 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 immediately send a soft copy of the instant Application along with this order to the IRP nominated herein on her e-mail id.

13. In the circumstances, CP No. (IB) 96/94(1)/JPR/2021 is admitted.

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(Deep Chandra Joshi)
Judicial Member

Sd/-

(Raghu Nayyar)
Technical Member