

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 14/JPR/2024
In CP No. (IB)- 81/95/JPR/2022

IN THE MATTER OF:

STATE BANK OF INDIA

...Applicant/ Creditor

VERSUS

SHRI RAJENDRA PRASAD MAHESHWARI

...Respondent/ Personal Guarantor

IA (IBC) No. 14/JPR/2024

MEMO OF PARTIES

MR. SATYENDRA PRASAD KHORANIA

Insolvency Professional

IBBI Reg. No.: IBBI/IPA-002/IP-N00002/2016-17/10002

402, OK Plus DP Metro, Opp. Metro Pillar No. 94, New
Sanganer Road, Jaipur- 302019 (Rajasthan)

Email id: skhorania@live.com

.....Resolution Professional

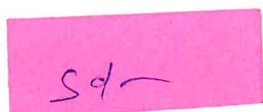
FOR THE RP : Satyendra Prasad Khorania, In person

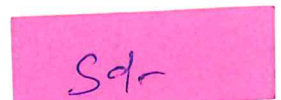
FOR THE RESPONDENT : Saumil Sharma, Adv.

Order Pronounced on: 13.08.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member







1. This Application bearing *IA(IBC) No. 14/JPR/2024* has been filed by *Mr. Satyendra P. Khorania*, the Resolution Professional, under Section 99(1) read with Section 99(7) of the Insolvency and Bankruptcy Code, 2016 ('Code'/'IBC') recommending the admission of the Application filed by *State Bank of India* ('Creditor'/'SBI') under Section 95 of the Code wherein it has sought commencement of the Insolvency Resolution Process ('IRP') against the Personal Guarantor, namely *Shri Rajendra Prasad Maheshwari* ('Personal Guarantor'), of *M/s Suzuki Textiles Limited* ('Corporate Debtor').
2. The Creditor had filed the main Application bearing *CP No. (IB)-81/95/JPR/2022* under Section 95 of the Code read with Rule 7 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 IRP against the Personal Guarantor of the Corporate Debtor for an amount of Rs. 80,77,57,655.84/- (Rupees Eighty Crores Seventy-Seven Lakhs Fifty-Seven Thousand Six Hundred Fifty-Five and Eighty-Four Paise Only). This Adjudicating Authority *vide* Order dated 30.11.2023 had appointed *Mr. Satyendra Prasad Khorania* as the Resolution Professional and directed him to file a report under Section 99 of IBC, 2016 and the same has been filed through the instant Interlocutory Application i.e., *IA(IBC)No. 14/JPR/2024*.
3. The Corporate Debtor has been granted various credit facilities by the State Bank of India along with other Consortium lenders/ banks. The credit

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facilities have become irregular and the debts have been classified as non-performing assets on the following dates:

Banks	Date of NPA
State Bank of India	02.06.2017
ICICI Bank Limited	28.10.2016
IDBI Bank Limited	01.04.2017
Tamilnadu Mercantile Bank Limited	31.03.2017
Oriental Bank of Commerce	30.06.2016
Bank of Baroda	22.05.2017
Punjab National Bank	30.06.2017

4. Subsequent to the classification of the loan accounts of the Corporate Debtor as NPA, *State Bank of India* being the lead bank of the consortium had issued a demand notice under Section 13(2) of the Securitization and Asset Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') for an amount of Rs. 144,57,96,998/- (Rupees One Hundred Forty-Four Crores Fifty-Seven Lakh Ninety-Six Thousand Nine Hundred and Ninety-Eight Only) to all the borrowers including *Mr. Rajendra Prasad Maheshwari*, the Personal Guarantor of the Corporate Debtor. Moreover, a separate notice dated 29.06.2019 had been issued by IDBI Bank for invocation of guarantee to the tune of Rs. 19,60,28,516/- (Rupees Nineteen Crores Sixty Lakh Twenty-Eight Thousand Five Hundred and Sixteen Only) to the Personal Guarantor.

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5. Hence, this Application has been filed by the Resolution Professional seeking admission of the Application filed under Section 95 on the following grounds:

- 5.1. That the Application filed by the Financial Creditor in the matter of Personal Guarantor, namely *Mr. Rajendra Prasad Maheshwari*, in *CP No. (IB)- 81/95/JPR/2022* falls within the parameters of Section 95 of the Code of 2016 as various Financial Creditors have demanded the amount of guarantee given by *Mr. Rajendra Prasad Maheshwari* to secure the repayment of the loans given to the Corporate Debtor. The Personal Guarantor has committed default in repayment of his liabilities arising on account of invocation of the personal guarantee given towards Corporate Debtor. Since, the liabilities remained unpaid, the requirement set out in Rule 3(e) of Personal Guarantor Rules, 2019 is satisfied.
- 5.2. That the Personal Guarantor has committed a default in payment of its liabilities and therefore, the requirement set out in section 95(1) of IBC is satisfied.
- 5.3. The Insolvency Petition satisfies the requirements of Section 95 of IBC, 2016 and has been filed in the requisite form, in terms of Rule 7(2) of the Rules, 2019, supported by the requisite fee and documents.
- 5.4. That the debts mentioned in the Application are not excluded debts.

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- 5.5. That the Personal Guarantor is not eligible under Section 80 for a fresh start process provided under Chapter II of IBC, 2016.
6. The Personal Guarantor has filed its Reply Affidavit *vide* Diary No. 1603/2024 dated 02.07.2024, stated the following:
- 6.1. It is submitted that the CIRP proceedings against the Corporate Debtor have been initiated by this Adjudicating Authority *vide* its Order dated 31.01.2022. This Adjudicating Authority has also approved the Resolution Plan of the Corporate Debtor *vide* its Order dated 18.01.2023, however, the liabilities owed to the financial institutions have not been satisfied with the amount offered in the Resolution Plan. The Personal Guarantor has given the guarantee against the credit facilities availed by the Corporate Debtor from various financial institutions. Further, the Personal Guarantor has executed guarantee bonds and extensions of the credit facilities and admits the part of the liability for which the guarantee bonds have been assigned to the financial institutions including SBI.
- 6.2. The Personal Guarantor has been duly informed by the RP about the proceedings initiated by the RP against him for payment of the dues outstanding in the accounts of Corporate Debtor in the books of SBI. It is stated that the Personal Guarantors have not been released from the liabilities for the due amount recoverable by the financial and other creditors. Further, the Personal Guarantor also admits that no payment

has been made to any of the creditors after the approval of the Resolution Plan.

7. The compliance of the relevant Sections of the Code is as follows:

Sr. No.	Requirements under Relevant provisions of Section 99 of the Code	Compliance by RP
I.	<p><i>Section 99(1):</i> 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</p>	<p>The Hon'ble NCLT Jaipur Bench vide order dated 30.11.2023 (copy of order received on 09.12.2023) has appointed Mr. Satyendra Prasad Khorania as RP.</p> <p>The RP has examined the application filed under section 95 of the Code, 2016 as filed by State Bank of India and submit the report to AA for acceptance of the application.</p>
II.	<p><i>Section 99(2):</i> 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>(c) signed acknowledgment by the creditor accepting receipt of dues.</p>	<p>Not Applicable</p> <p>That upon bare reading of the order passed by the Hon'ble NCLT Jaipur bench dated 18.01.2023 the RP found following: -</p> <p><i>"None of the guarantors (personal guarantor as well as corporate guarantor) of the Corporate Debtor shall be released from their liability to the due amount under the Guarantee Bond executed by them in favour of financial and other creditors. The Personal Guarantors and Corporate Guarantor to the Corporate Debtor shall continue to be liable to pay the due amount under the guarantee bond executed by them"</i></p> <p>As per the above-mentioned observation mentioned in the order dated 18.01.2023, it is very much evident that the liabilities of personal</p>



Sr. No.	Requirements under Relevant provisions of Section 99 of the Code	Compliance by RP
		guarantors were not released by the lenders while approving the resolution plan of corporate debtor and undersigned has also enquired through Personal Guarantor and they orally told they have not paid any amount to any of the FC after the approval of Resolution plan, the liabilities of personal guarantors are still in existence.
III.	<i>Section 99(3):</i> 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.	No information is available in this regard.
IV.	<i>Section 99(4):</i> 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 required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.	The Resolution Professional sought clarifications/information from the Personal Guarantor through email dated 14.12.2023 and 15.12.2023 under section 99(4) of IBC, 2016 to enable to further examine the application filed u/s 95 of IBC, 2016. And also sent email to financial creditors (State Bank of India, Bank of Baroda, IDBI Bank, ICICI Bank, Punjab National Bank and Tamilnadu Mercantile Bank Limited etc.)
V.	<i>Section 99(5):</i> The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.	The Resolution Professional sought clarifications/information from the Personal Guarantor through email dated 14.12.2023 and 15.12.2023 to enable to further examine the application filed u/s 95 of IBC, 2016.

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Sr. No.	Requirements under Relevant provisions of Section 99 of the Code	Compliance by RP
		<p>Personal Guarantor has not replied the email of the Resolution Professional but Mr. Rajendra Maheshwari which includes some previous default notices, copy of previous year old balance sheets and ITRs. The personal guarantor has not submitted his latest ITR as well as balance sheet.</p> <p>One of the financial Creditor IDBI Bank has replied on 15.12.2023 and provided the documents showing default committed by the personal guarantors.</p> <p>Rest of the Financial creditors has not replied till the filing of the report u/s 99 of the code, 2016.</p>
VI.	<p><i>Section 99(6):</i> The Resolution Professional shall examine the application and ascertain that -</p> <p>(a) the application satisfies the requirements set out in Section 94 or 95;</p> <p>(b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).</p>	<p>The RP has examined the application and ascertained that the application satisfied the requirements set out in Section 94 or 95.</p> <p>The State Bank of India (Lead Bank of the Consortium) on behalf of consortium had issued a joint demand notice under section 13(2) of the SARFAESI Act, 2002 on 30.07.2019 to all the borrowers including Mr. Rajendra Prasad Maheshwari (Personal Guarantor) and requested to make the payment of Rs. 144,57,96,998/- mentioned in the notice issued by State Bank of India (lead bank of Consortium) on behalf of Consortium</p>

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Sr. No.	Requirements under Relevant provisions of Section 99 of the Code	Compliance by RP																
		<p>in terms of Guarantee executed by him. The IDBI Bank has also issued separate notice dated 29.06.2019 for invocation of guarantee amounting to Rs. 196028516/- as on 01.06.2019 to the Guarantors of the loan taken by the corporate debtor Suzuki Textile Limited.</p> <p>That credit facility have become irregular and the debt has been classified as non-performing assets on the following dates:</p> <table border="1" data-bbox="919 965 1513 1462"> <thead> <tr> <th>Banks</th> <th>Date of NPA</th> </tr> </thead> <tbody> <tr> <td>State Bank of India</td> <td>02.06.2017</td> </tr> <tr> <td>ICICI Bank Limited</td> <td>28.10.2016</td> </tr> <tr> <td>IDBI Bank Limited</td> <td>01.04.2017</td> </tr> <tr> <td>Tamilnadu Mercantile Bank Limited</td> <td>31.03.2017</td> </tr> <tr> <td>Oriental Bank of Commerce</td> <td>30.06.2016</td> </tr> <tr> <td>Bank of Baroda</td> <td>22.05.2017</td> </tr> <tr> <td>Punjab National Bank</td> <td>30.06.2017</td> </tr> </tbody> </table>	Banks	Date of NPA	State Bank of India	02.06.2017	ICICI Bank Limited	28.10.2016	IDBI Bank Limited	01.04.2017	Tamilnadu Mercantile Bank Limited	31.03.2017	Oriental Bank of Commerce	30.06.2016	Bank of Baroda	22.05.2017	Punjab National Bank	30.06.2017
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VII.	<p><i>Section 99(7):</i> After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.</p>	<p>That upon examination of the application filed by the State Bank of India before the Hon'ble National Company Law Tribunal, Jaipur Bench and after the due examination of the information and explanation sought from the personal guarantor & financial creditors in the matter and documents available in public domain, the Resolution Professional herein recommends acceptance of the said</p>																

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<i>Sr. No.</i>	<i>Requirements under Relevant provisions of Section 99 of the Code</i>	<i>Compliance by RP</i>
		application in accordance with the section 99(7) of the IBC.
VIII.	<i>Section 99(8):</i> 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.	The personal guarantor is not eligible under section 80 for a fresh start process provided under Chapter II of IBC, 2016.
IX.	<i>Section 99(9):</i> The Resolution Professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	i. That the Personal Guarantor Mr. Rajendra Prasad Maheshwari, in CP-(IB)-81/95/JPR/2022 herein falls within the parameters of Section 95 of the Code of 2016 as various Financial Creditors have demanded the amount of Guarantee which is given by Mr. Rajendra Prasad Maheshwari to secured the repayment of loan given to Suzuki Textiles Ltd. which is still payable but not paid by the Personal Guarantor Mr. Rajendra Prasad Maheshwari therefore, the Personal Guarantor has committed default in repayment of his liabilities in terms of debt arising on account of

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<i>Sr. No.</i>	<i>Requirements under Relevant provisions of Section 99 of the Code</i>	<i>Compliance by RP</i>
		<p>Invocation of personal guarantee given by the Personal Guarantor for the Corporate Debtors i.e. Suzuki Textiles Limited (CIN: U17124RJ1986PLC003784) and the liabilities remained unpaid and accordingly, the requirement set out in Rule 3(e) of PG Rules, 2019 is satisfied,</p> <p>ii. That the debtor has committed a default in payment of its liabilities and therefore, the requirement set out in section 95(1) of IBC is satisfied</p> <p>iii. The Insolvency Petition satisfies the requirement of Section 95 of IBC, 2016 and has been filed in the requisite form, in the terms of the Rule 7(2) of the rules, 2019, supported by the requisite fee and documents.</p> <p>iv. that the debts mentioned in the application are not excluded debts.</p> <p>v. that the personal guarantor is not eligible under section 80 for a fresh start process provided under Chapter</p>

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<i>Sr. No.</i>	<i>Requirements under Relevant provisions of Section 99 of the Code</i>	<i>Compliance by RP</i>
		II of IBC, 2016
X.	<i>Section 99(10):</i> 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.	Copy of the Report attached herewith.

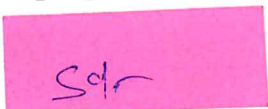
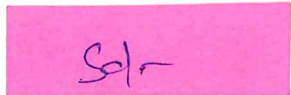
8. Since, the parameters laid down under the provisions of law are satisfied, we are inclined to admit the Application filed by the Creditor concerning the initiation of the Individual Insolvency Resolution Process of the Personal Guarantor. The Creditor is directed to deposit Rs. 1,00,000/- (Rupees One Lakh Only) in the bank account of the Resolution Professional within one week of the passing of the order towards his fees and expenses which shall be subject to the rules and regulations prescribed under law.
9. Resultantly, moratorium is declared as provided under Section 101 of IBC, 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 or on the date the Adjudicating Authority passes an order on the repayment plan under Section 114, whichever is earlier. During the moratorium period interalia 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


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- 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.

10. The Resolution Professional viz., *Mr. Satyendra Prasad Khorania*, who has been appointed under Section 97 of the Code *vide* Order dated 30.11.2023, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days from the date of this Order, 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 the IBC. The publication of the notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the state where the Personal Guarantor resides. The Resolution Professional shall furnish two copies of the notice to the Registry. One shall be placed by the Registry on the website of this Adjudicating Authority and the other shall be affixed in the premises of this Authority.
11. 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 Personal Guarantor 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.

12. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of the Creditors should be summoned, the same shall be specified in detail as provided under Section 106(3). The meeting shall be held in accordance with Section 107 of the Code.
13. The meeting of the Creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of the Code. The Resolution Professional shall prepare a report in accordance with Section 112 of the Code and submit the same to this Authority and its copies of which shall be provided to the Personal Guarantor 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.
14. In terms of the above, *CP No. (IB)- 81/95/JPR/2022* filed under Section 95 of the IBC is admitted and the Insolvency Resolution Process stands initiated against the Debtor/Personal Guarantor i.e. *Mr. Rajendra Prasad*



Maheshwari. Accordingly, *IA (IBC) No. 14/JPR/2024* is taken on record and stands disposed of.

Sd/-

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

Sd/-

**RAJEEV MEHROTRA,
TECHNICAL MEMBER**