

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

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

SHRI VELAMUR G. VENKATA CHALAPATHY,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 243/JPR/2024
In CP No. (IB)- 71/94(1)/JPR/2023

IN THE MATTER OF:

KESAR SINGH SHEKHAWAT

...Applicant/ Debtor

VERSUS

ORIENTAL BANK OF COMMERCE
(NOW PUNJAB NATIONAL BANK)

...Respondent/ Creditor

MEMO OF PARTIES

MR. SHYAM SUNDAR MAHESHWARI, RP

Flat No. F-2, Plot No. 35, Shanti
Vihar, Kalyan Nagar, Tonk Road,
Jaipur- 302029 (Rajasthan)

...Applicant

FOR THE APPLICANT	:	Nitesh Shrivastava, Adv.
FOR THE RP	:	Karan Pratap Singh, Adv.
FOR THE RESPONDENT	:	Vikas Jain, Adv.

Order Pronounced On: 16.10.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member


1. The Applicant, namely *Mr. Kesar Singh Shekhawat*, had filed an Application bearing *CP No. (IB)- 71/94(1)/JPR/2023*, under Section 94(1)

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Assistant Registrar
National Company Law Tribunal
Jaipur

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 Insolvency Resolution Process ('IRP') against himself being the Personal Guarantor of the Corporate Debtor namely, *M/s Super Shiv Shakti Chemicals Private Limited*, for an amount of Rs. 30,16,69,673.22/- (Rupees Thirty Crores Sixteen Lakhs Sixty- Nine Thousand Six Hundred Seventy- Three and Twenty- Two Paisa Only).

2. On presentation of the Application, this Authority *vide* Order dated 12.03.2024 had appointed *Mr. Shyam Sundar Maheshwari*, bearing Registration No. IBBI/IPA-001/IP-P-02115/2020-2021/13321 as the Resolution Professional and directed him to file a report under Section 99 of IBC, 2016 which has been filed by him through *IA(IBC)No. 243/JPR/2024*.
3. The Present Application bearing *IA(IBC)No. 243/JPR/2024* 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 Personal Guarantor under Section 94 of the Code seeking commencement of Insolvency Resolution Process against the Debtor/Personal Guarantor, namely, *Mr. Kesar Singh Shekhawat*. The Resolution professional herein recommends acceptance of the said Application in accordance with Section 99(7) of IBC and the reasons for

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such recommendation as per Section 99(9) of IBC, 2016 are set forth as below:

- 3.1. The Applicant/Personal Guarantor *Mr. Kesar Singh Shekhawat*, (Personal Guarantor) in *CP No. (IB)- 71/94(1)/JPR/2023* herein falls within the parameters of Section 94(1) of the Code of 2016 as Applicant/Personal Guarantor has committed default in repayment of his liabilities in terms of debt arising on account of invocation of personal guarantee given by Applicant/Personal Guarantor for loan availed by the Corporate Debtor *M/s Super Shiv Shakti Chemicals Private Limited* from *Oriental Bank Of Commerce* (Now Punjab National Bank). The bank had invoked the guarantee vide notice issued u/s 13(2) of SARFAESI, 2002 and the liabilities remained unpaid and accordingly, the requirement set out in Rule 3(e) of Personal Guarantor Rules, 2019 is satisfied.
- 3.2. The Debtor has committed a default in payment of its liabilities and therefore, the requirement set out in section 94(1) of the IBC is satisfied and the Application has been filed in compliance 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.
- 3.3. That the Applicant/ Personal Guarantor does not fall under the prohibiting criteria mentioned under the provisions of Section 94(4)

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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:

- i. Not an undischarged bankrupt;
- ii. Not undergoing a fresh start process;
- iii. Not undergoing an insolvency resolution process; or
- iv. Not undergoing a bankruptcy process.

- 3.4. 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.
- 3.5. 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/- (Rupees Two Thousand Only) as prescribed in Rules of 2019 and in the manner as prescribed under Rule 6(1) of Rules of 2019.
- 3.6. That the Application filed u/s 94(1) of the Code is accompanied with details and documents relating to:

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- i) The debts owned by the Corporate Debtor (for whom the guarantee has been given by the personal guarantor) to the creditor
- ii) Relevant evidence of such default or non-payment of debt.

3.7. That the Applicant/Personal Guarantor is not eligible under Section 80 of the Code for the fresh start process provided under Chapter II of the Code of 2016.

4. The compliance with 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
ii.	Section 99 (2): 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 – a) evidence of electronic transfer of the unpaid	Not Applicable

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	amount from the bank account of the debtor; b) evidence of encashment of a cheque issued by the debtor; or a signed acknowledgment by the creditor accepting receipt of dues.	
iii.	Section 99(3): 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.	Not Applicable
iv.	Section 99(4): 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 Debtor has not given the information sought, however the creditor had provided the necessary information sought.
v.	Section 99(5): The person from whom information or explanation is sought under sub-section (4) shall furnish	YES The Debtor has not given the information sought, however the creditor had provided the necessary information sought.

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	such information or explanation within seven days of receipt of the request.	
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 sub-section (4).	YES
vii.	Section 99(7): After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.	YES
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	Not Applicable

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	under Section 81 by the Adjudicating Authority.	
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
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

5. The Financial Creditor i.e., *Punjab National Bank* filed its reply/ objections vide Diary No. 1702/2024 dated 16.07.2024 to the Report of the RP under Section 99 of the IBC, 2016 and contended the following:

5.1. It is submitted that all the averments, contentions, statements, and/ or allegations made by the RP in this report are denied and shall not be deemed to have been accepted. A bare perusal of the Report filed by the RP, it shows that the RP on various occasions wrote emails to the Personal Guarantor to provide the information/ details in accordance with Section 99(4) of the IBC, however, the Personal Guarantor had

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not adhered to the emails & failed to provide the requisite information/ details to the RP.

5.2. It is humbly submitted that the loan account of the Corporate Debtor was classified as NPA on 30.03.2017 and the Bank had initiated the proceedings under the SARFAESI Act, 2002 whereby the Bank demanded its outstanding amount from the respective obligants of loan account. It has been stated that credit facility was secured by various securities (immovable properties) of the obligants including the properties belonging to the Personal Guarantors as mentioned below:

- a) Residential House Situated at Plot No. 112C, Shastri Nagar, Bhilwara, Rajasthan belonging to Mrs. Surendra Kanwar
- b) Residential House Situated at Plot No. 112C/A, Shastri Nagar Ext., Bhilwara, Rajasthan belonging to Mrs. Uacchab Kanwar
- c) Comm. Shop No. 33, Situated at Chittor Road, Near Gurunanak Petrol Pump, Bhilwara belonging to Mrs. Surendra Kanwar W/o Shri Brijraj Singh Shekhawat
- d) Comm. Shop No. 34, Situated at Chittor Road, Near Gurunanak Petrol Pump, Bhilwara belonging to Mrs. Sandhya Kanwar W/o Shri Kesar Singh Shekhawat

5.3. It has been further stated that the immovable properties as mentioned above at Sr. No. a) & d) have already been sold by the Bank under the provisions of SARFAESI Act, 2002, the rules made thereunder. Further, the Bank is initiating the proceedings SARFAESI Act against the left out immovable properties i.e. Sr. No. b) & c). It is also submitted that the CIRP proceedings were initiated against the

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Corporate Debtor and the Resolution Plan has also been approved by this Adjudicating Authority.

5.4. Further, it has been stated that on the one hand the Application under Section 94 has been filed by the Personal Guarantor through *Shri Shyam Sundar Maheshwari* and on the other hand, despite the various emails wrote by the RP to Personal Guarantor to provide the information/ details, however, the Personal Guarantor failed to provide the same to the RP. This clearly shows that the Personal Guarantor is having malafide & dishonest intention and the Personal Guarantor wants to frustrate the proceedings of the Bank. Without submission of details by the Personal Guarantor who has filed this application, no purpose will be served by submitting the report by RP, as such, at this stage the report submitted by RP has no relevancy in this matter.

5.5. The present application has been filed only to defraud the creditors and for the purpose of escaping the liability to pay the amount due in the books of Bank. It is mentioned that the Personal Guarantor has filed the present application for wholly and solely to gain the benefit of moratorium as provided under Section 96 of the Code and to seek stay on the legal action or proceedings pending before the other forum(s), this shows that the conduct of the Personal Guarantor is questionable as the Personal Guarantor is involved in the ill-practice

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of abuse of process of law and wants to frustrate the recovery proceedings of public money as initiated by the Bank, hence the Application filed under Section 94 is liable to be dismissed with heavy cost for being an abuse of process of law.

6. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply and the Documents enclosed with the Application.
7. In the instant case the Financial Creditor filed certain objections with regard to the admission of the Insolvency Resolution Process against the Personal Guarantor filed under Section 94 of the Code. It is pertinent to note that the Financial Creditor has not denied the existence of the debt and default committed by the Personal Guarantor which are the basic elements for initiation of the IRP. Further, the Financial Creditor has failed to substantiate its averments qua non-fulfilment of the conditions laid down under section 94 of IBC 2016. Moreover, the Resolution Professional in his report has submitted that the Personal Guarantor satisfies the requirements set out in section 94 of IBC 2016. Thus, the blanket objection of the Financial Creditor relating to non-submission of the documents by the Applicant cannot hamper the otherwise complete Application filed under Section 94 of the Code especially when the Resolution Professional has recommended the admission of the same in the report under Section 99 of the Code.

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8. Further, in so far as the objection qua pendency of the SARFAESI proceedings against the Applicant is concerned, it is no more res-integra that IBC, 2016, is a complete code in itself and the provisions of the IBC, 2016, would prevail notwithstanding anything inconsistent therewith, contained in any other law for the time being in force. Further, mere fact that the Bank has already sold two of the secured properties under SARFAESI proceedings, would have no effect on the admission of the instant Application.
9. In view of the forgoing, the report submitted by the Resolution Professional, the Application i.e., *IA(IBC)No. 243/JPR/2024* filed under Section 99 of IBC is taken on record, and the CP No. (IB)- 71/94(1)/JPR/2023 is hereby admitted under Section 100 of the IBC.
10. Resultantly, an Insolvency Resolution Process is initiated against 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;
- 10.1 Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
- 10.2 The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

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- 10.3 The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- 10.4 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.
11. The Resolution Professional *viz.*, *Mr. Shyam Sundar Maheshwari*, who has been appointed under Section 97 *vide* order dated 12.03.2024, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading 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 the notice shall be made in two newspapers, one in English and other in vernacular language having wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two copies of the notice to the Registry. One shall be placed by the Registry on their website and the other shall be affixed to the premises
12. 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

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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.

13. 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 the 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 shall be issued to the creditors (as per the list prepared) by all relevant/feasible modes. Such notice must contain the details as provided under Section 107 of the Code. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof.
14. 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 of the meeting of the creditors on the repayment plan with all the details as provided under Section 112 and submit the same to this Authority and copies of the same 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.
15. The Personal Guarantor is directed to deposit Rs. 1,00,000/- (Rupees One Lakh Only) to the bank account of the Resolution Professional within one

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week towards its fees and expenses. This shall be subject to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

16. In terms of the above, CP No. (IB)-71/94(1)/JPR/2023 filed under Section 94 of the IBC is admitted and the Insolvency Resolution Process stands initiated against the said Debtor/Personal Guarantor i.e. Mr. Kesar Singh Shekhawat. Accordingly, IA No. 243/JPR/2024 stands disposed off.



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