IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

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

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 77/94(1)/JPR/2023

***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:

MS. SHAHNAJ BANO

...Applicant/ Debtor

VERSUS

BANK OF BARODA

...Respondent/ Creditor

MEMO OF PARTIES

MS. SHAHNAJ BANO
Personal Guarantor, M/s Simna Exim India Pvt. Ltd.
L-13, U I T Quater, Bhopalpura Road,
Shastri Nagar, Bhilwara- 311001
(Rajasthan)

...Applicant

VERSUS

BANK OF BARODA
R.C. Vyas Colony Branch,
Bhilwara- 311001 (Rajasthan)

...Respondent

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FOR THE PETITIONER(S) : Nitesh Shrivastava, Adv.

Dated: 20.12.2023

ORDER

1. The present application is filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') 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/ Personal Guarantor *Ms. Shahnaj Bano*. The prayer made is to initiate the Insolvency Resolution Process in respect of *Ms. Shahnaj Bano*, being the Personal Guarantor for *M/s Simna Exim India Pvt. Ltd.* ('Corporate Debtor').

2. It is submitted that the Corporate Debtor availed term loan facilities in the form of cash credit amounting to Rs. 45 lakhs from Bank of Baroda ('BoB') vide loan cum hypothecation agreement dated 05.07.2013. Thereafter, the supplemental loan cum hypothecation agreement was executed on 21.05.2018 by which the existing credit facilities was enhanced by Bank of Baroda. On account of being affected by COVID-19, the Corporate Debtor availed working capital financial facility amounting to Rs. 27 lakhs from the Bank of Baroda vide supplemental loan cum hypothecation agreement dated 21.12.2021. Due to unavailability of the funds, the account of the Corporate Debtor was classified as NPA by the Bank of Baroda on 30.06.2023.

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3. It has also been submitted that the Debtor had availed home loan from the Bank of Baroda and the same was sanctioned vide letter dated 29.06.2013. Additional credit facility was also availed and sanctioned vide letter dated 09.05.2017. Due to unavailability of funds, the account of the Applicant was classified as NPA on 24.04.2023.

4. Recovery proceedings were initiated by Bank of Baroda due to non payment of debt and notice under Section 13(2) of SARFAESI Act, 2002 vide notice dated 28.08.2023. Thereafter, a letter was sent to the Bank of Baroda dated 14.10.2023 by the Corporate Debtor along with its guarantors including the Applicant.

5. It is pertinent to note that an application namely, *CP No. (IB)-74/10/JPR/2023* under Section 10 of IBC, 2016 has been filed by the Corporate Debtor itself seeking initiation of Corporate Insolvency Resolution Process, the same is pending adjudication before this Adjudicating Authority.

6. It is clear that the Applicant has failed in fulfilling his obligations pursuant to the personal guarantee given to the Corporate Debtor within 60 days from the date 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

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Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.

7. It is seen that the Applicant in Part III of the application has mentioned the amount of default of Simna Exim India Private Limited is Rs. 1,20,99,319.91/- (Rupees One Crore Twenty Lacs Ninety-Nine Thousand Three Hundred Nineteen and Ninety-one Paisa Only) and the amount of default of Home Loan is Rs. 59,83,680.38/- (Rupees Fifty- Nine Lakhs Eighty- Three Thousand Six Hundred Eighty and Thirty- Eight Paisa Only), so the total amount of default is Rs. 1,80,83,000.29/- (Rupees One Crore Eighty Lakhs Eighty- Three Thousand and Twenty- Nine Paisa only) on 09.10.2023 and the date of default of Simna Exim India Private Limited is 30.06.2023 and the date of default of Home Loan is 24.04.2023.

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

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9. 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 28.11.2023 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.

10. 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.

11. The Applicant has proposed the name of Resolution Professional; therefore, this Authority is hereby appointing *Mr. Shyam Sundar Maheshwari* bearing Registration No. IBBI/IPA-001/IP-P-02115/2020-2021/13321 with the e-mail address mhswr.shyam@gmail.com and phone number +91 9783368645 as the RP in the present matter.

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12. In this matter, the Resolution Professional appointed herein, *Mr. Shyam Sundar Maheshwari*, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. He is directed to recheck availability of all information as per the relevant Rules & Forms. He 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.

13. A 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.

14. The Registry is directed to immediately send a soft copy of the instant Application along with this order to the RP nominated herein on his e-mail id.

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15. In the circumstances, prayer for appointment of RP is allowed.

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DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sd/-

RAJEEV MEHROTRA,
TECHNICAL MEMBER