

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**



I.A. 831/2023

and

C.P. No. (IB) 1236/MB/C-III/2022

Under Section 94 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) 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

Sunita Dinesh Jaiswal

Flat No. 1902, Wing II, Floor No.19,
Marathon Era II, V S Lane, Lower Parel West,
Mumbai- 400013

... Personal Guarantor/Petitioner

Order pronounced on: 16.02.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Petitioner : Adv. Shivam Laturiya

For the SBI : Adv. H.P. Kar

For the RP: : Adv. Vishi Shrivastava

Per: Ms. Lakshmi Gurung, Member (Judicial)

1. This Petition has been filed by **Sunita Dinesh Jaiswal** ("**Petitioner/ Personal Guarantor**") under section **94** of the Insolvency and Bankruptcy Code, 2016 ("**the Code**") read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for



Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“**IBBI Rules**”) seeking to initiate Insolvency Resolution Process against himself being the Personal Guarantor of M/s **J-Marks Exim (India) Pvt. Ltd.** (“**Corporate Debtor**”).

2. The Petitioner/ Personal Guarantor had given a guarantee as per the deed of guarantee dated 17.02.2012 in favor of Corporate Debtor. The loan granted to Corporate Debtor was declared as Non-Performing Assets on 30.09.2013 and subsequently the Corporate Debtor was admitted into CIRP vide order dated 26.05.2020 in C.P. 2176/MB/C-IV/2019.
3. The Petitioner has filed the present petition on 29.09.2022 seeking insolvency resolution process proposing the name of Mr. Manish Lalji Dawda to be appointed as RP who had submitted his written consent to act as RP along with AFA.
4. The State Bank of India has filed an **I.A. 831/2023** seeking following reliefs:
 - a. *To declare that the Insolvency Professional Mr Manish Lalji Dawda unfit to be an Insolvency Professional of the guarantor, and in terms thereof, replace Mr. Manish Lalji Dawda with any other Insolvency Professional as this Hon'ble Tribunal deems fit*
 - b. *That this Hon'ble Tribunal be pleased to direct the Respondent No. I provide to the Applicant all the correspondences, during interim Moratorium period.*
 - c. *That pending hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to:*
 - i. *Stay the effect, implementation and operation of the interim. Moratorium.*
 - ii. *Order and restrain the Respondent No.1 from making communication with any authority with respect to*



secured asset of the Applicant which have not been released by the Applicant being Shops No. 55A, 55B and 56A on the first floor Nakshtra Dadar West, Mumbai in the name of Mr. Dinesh Jaiswal and Mrs. Sunita Jaiswal, Flat No. A/203, 2nd Floor Adm. 49.80 sq. mts. At Mahavir Darshn, Lower Parel, Mumbai and Flat No. A/204 2nd Floor adm 49.80 sq. meters at Mahavir Darshan, Lower Parel, Worli in name of Dinesh Jaiswal and Mrs. Sunita Jaiswal.

iii. Order and restrain the Respondents from creating any third party rights and/or interest qua the Applicant's security interest with respect to secured asset of the Applicant.

5. The State Bank of India has filed an affidavit dated 29.11.2023 proposing to appoint Mr. Birendra Kumar Agarwal having IBBI Registration No. IBBI/IPA/IP-P00564/2017-18/11040 as Resolution Professional.
6. Mr. Manish Lalji Dawda has also filed an affidavit dated 04.12.2023 withdrawing his name for appointment of RP and also issued NOC for appointment of another RP.
7. The Petition for initiating Insolvency Resolution Process against Personal Guarantor to the Corporate Debtor has been filed in the prescribed form i.e. Form-A as mandated under section 94 of the I&B Code.
8. In the case of ***Dilip B Jiwrajka Vs. Union of India in Writ Petition (Civil) No 1281 of 2021*** decided on 09.11.2023, the Hon'ble Apex Court has held that at the stage of appointment of RP under Section 97 of the Code, no judicial adjudication is involved. The conclusion given in para 86 of the judgment, relevant extract of which is reproduced below:-



86.....

- ii. *The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- iii. *The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage 62 when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*

9. In view of the above judgment and considering the prayers in I.A. 831/2023, we hereby appoint Mr. Birendra Kumar Agarwal having IBBI Registration No. IBBI/IPA/IP-P00564/2017-18/11040 as Resolution Professional against the personal guarantor, Smt. Sunita Dinesh Jaiswal. The fee payable to RP shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/ Circulars/ Directions issued in this regard.

10. This Bench also directs for an advance payment of Rs. 2,00,000/- (Rupees Two Lakhs Only) to be paid by the Petitioner to the Resolution Professional (RP) which shall be adjusted towards the fee and expenses payable to the RP.



11. The Petitioner is directed to serve copy of the Petition and the Order on the Resolution Professional and IBBI forthwith.
12. The Resolution Professional is directed to examine the application and submit its report in accordance with Section 99 of the Code **within 10 days**.
13. List the matter for report of the Resolution Professional on **22.03.2024**.
14. In view of appointment of Mr. Birendra Kumar Agarwal as RP in place of Mr. Manish Lalji Dawda, the I.A. 831/2023 is **allowed** in terms of prayer clause 'a'. Accordingly, I.A. 831/2023 is **disposed of**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Rakesh, Steno

Sd/-

Lakshmi Gurung
Member (Judicial)