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)-63/94(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:

SUDHIR KUMAR AGARWAL
Flat No.- 401, 4th Floor,
OK Plus Empress Bani Park,
B-4, Shiv Marg, Jaipur- 302016 (Rajasthan)

...Applicant / Personal Guarantor

For the Applicant : Rajesh Kumar Gautam, Adv.
Anant Gautam, Adv.
Prateek Kedawat, Adv.

For the Creditor : Ram Naresh Vijay, Adv.

Order Pronounced On: 31.01.2022

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. CP No. (IB) 63/94/JPR/2021 is filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency

Sd- Sd-

Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 ('Rules') by the Applicant/ Debtor Mr. Sudhir Kumar Agarwal. The prayer made is to initiate the insolvency resolution process in respect of Mr. Sudhir Kumar Agarwal, being the Personal Guarantor for Airen Metals Private Limited ('AMPL') and Airen Copper Private Limited ('ACPL') ('Corporate Debtors').

2. It is submitted that the applications for Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtors are pending before this Adjudicating Authority. It is also submitted that the Corporate Debtors failed in fulfilling their financial obligations to Union Bank of India ('UBI'), Mid Corporate Branch and M.I. Road Branch, Jaipur; Bank of Baroda ('BOB'), Specialised SME Branch, Jaipur; Yes Bank Ltd. ('YBL'), Ashok Marg, C Scheme, Jaipur Branch; TATA Capital Financial Services Ltd. ('TCFSL'), Videocon Towers, New Delhi; Aditya Birla Finance Ltd. ('ABFL'), Sector-3, Noida (U.P.); and Axis Bank Ltd. ('ABL'), SA Department, Sector 128, Noida (U.P.).

3. Consequently, the present Applicant received a demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') from UBI in respect of AMPL dated 21.08.2021 and BOB in respect of ACPL dated 09.04.2021, seeking invocation of personal guarantee given by the Applicant to the aforementioned Corporate Debtors. Since the Applicant

Sd-

Sd-

failed in fulfilling his obligations, he has filed this Application. The amount in default, for UBI, is stated to be Rs. 240,30,49,123.09/- and date of default is 21.08.2021, whereas, for BOB the amount in default is stated to be Rs. 21,39,92,409.89/- and date of default is 09.04.2021 (date after the expiry of 60 days from date of the notice under Section 13(2) of SARFAESI Act).

4. Further, the other aforementioned lenders have also initiated their respective legal proceedings available as per law:

   a. YBL has sent a legal notice dated 06.01.2021 to AMPL and the applicant to repay the dues of Rs. 2,81,34,027.79/-. On failure to pay the aforesaid amount, it filed a case against the applicant under Section 138 of the Negotiable Instruments Act on 24.02.2021 before the Metropolitan Magistrate Court, Ahmedabad bearing CNR No. GJAH22-024296-2021 and has also filed a Case No. OA/314/2021 before the Debt Recovery Tribunal, Jaipur for recovery of its dues on 29.07.2021.

   b. TCFSL has sent the legal notice dated 30.11.2020 to AMPL and the applicant to repay the dues of Rs. 6,40,74,060.35/-. On failure to pay the aforesaid amount, on 04.01.2021 it has also filed a case against AMPL and the applicant under Section 138 of the Negotiable Instruments Act before the Metropolitan Magistrate Court, Ahmedabad bearing CNR No. GJAH22-000570-2021.

Sd- Sd-

c. ABFL on 12.11.2020 has sent a legal notice to AMPL and the applicant under Section 138 of the Negotiable Instruments Act to which the applicant has sent a reply on 02.12.2020. Moreover, ABFL has filed a case under Section 138 however, the applicant has not received any court notice regarding the same at the time of filing of this application.

d. ABL on 06.07.2021 has sent a legal notice to AMPL and the applicant under Section 138 of the Negotiable Instruments Act to which the applicant has sent a reply on 22.07.2020.

5. However, it is seen that the applicant in Part III of the application has stated the total amount of debt (including interest or penalties) to be Rs. 240,10,09,532/-.

6. Furthermore, an application under Section 7 of the Code has been filed against AMPL by Kedia Financial Services Pvt. Ltd. [*CP No. (IB)-35/7/JPR/2021*] while, the corporate debtor ACPL has filed an application under Section 10 of the Code for its insolvency on 05.07.2021 [*CP No. (IB)-33/10/JPR/2021*].

7. The Application has been filed in respect of debts that 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

Sd—

Sd—

Application. The Applicant has filed an affidavit stating that he is not barred in terms of Section 94(4) of the Code *vide* Diary No. 2417/2021 dated 22.11.2021. The Application under consideration is in 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.

8. 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 01.09.2021 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, the provisions of Section 96(1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

9. As per Rule 6(2) of the Rules, the Guarantor shall serve 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

Sd-

Sd-

a postal slip. In this respect, the Applicant had been directed to file an affidavit of service to the creditors and Corporate Debtor along with a tracking report, the said has been filed *vide* Diary No. 2417/2021 dated 22.11.2021.

10. The Applicant has proposed the name of Insolvency Professional ('IP'), Ms. Garima Diggiwal for appointment as Resolution Professional ('RP'). However, this bench is cognizant of sensitivity of Section 94 applications being filed through RPs on behalf of Personal Guarantors of Corporate Debtors, particularly those under CIRP including pending petitions. It is all the more relevant, if we find slight inconsistencies in submissions *vis-à-vis* annexures or even minor errors / omissions in applications as stated in Para 5 hereinbefore. Against such exacting standards, we are considering an alternate RP, though this shall not be construed as any reflection in any way on the competence of the RP through whom this application is filed. Hence, this bench is inclined to appoint the RP from the pool of RPs empanelled with the IBBI. Therefore, the bench is appointing Ms. Pratibha Khandelwal bearing Registration No. IBBI/IPA-002/IP-N00031/2016-17/10068 with the e-mail address cspratibhak@gmail.com and phone number +91-9928325945 as the RP in the present matter. The said RP is directed to file the written consent to act as resolution professional in Form-A provided under Regulation 4(2) of the Insolvency and Bankruptcy Board of India

Sd- Sd-

(Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

11. In this matter, the Resolution Professional appointed herein, Ms. Pratibha Khandelwal, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. She is 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.

12. Copy of this order be supplied to the Applicant. The Applicant and his 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.

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

Sd- Sd-

14.List the matter for further proceedings in the case on 25.02.2022.

Sd-

Raghu Nayyar,
(Technical Member)

Sd—

Deep Chandra Joshi,
(Judicial Member)