

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

CP No. (IB)- 27/95/JPR/2021

IN THE MATTER OF:

SHAPOORJI PALLONJI FINANCE PRIVATE LIMITED

...Applicant

VERSUS

AJAY KUMAR SINGH

...Respondent/ Personal Guarantor

MEMO OF PARTIES

SHAPOORJI PALLONJI FINANCE PRIVATE LIMITED

SP Centre, Courtyard 10B, 41/44
Minoo Desai Road, Colaba, Mumbai-
400005 (Maharashtra)

...Applicant

VERSUS

AJAY KUMAR SINGH

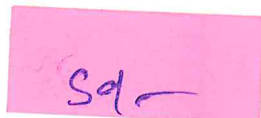
201, Kanchan Apartments, Tilak
Nagar, Opp. L.B.S. College, Raja
Park, Jawahar Nagar, Jaipur- 302004
(Rajasthan)

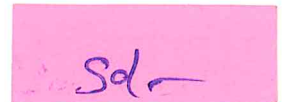
...Respondent/ Personal Guarantor

FOR THE APPLICANT(S)

:

Cyrus Barucha, Adv.
Shivangshu Naval, Adv.





ORDER

1. The present application is filed by *Shapoorji Pallonji Finance Pvt. Ltd.* ('Creditor'/ 'Applicant') with a prayer to initiate Insolvency Resolution Process against *Mr. Ajay Kumar Singh* ('Personal Guarantor'/ 'Respondent'), through *Mr. Cyrus Barucha*, Advocate along with *Mr. Shivangshu Naval*, Advocate under Section 95 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The Personal Guarantor has stood as Guarantor in respect of the loans availed by *M/s Jumbo Finvest (India) Limited* ('Corporate Debtor').
2. It is stated that the Personal Guarantor executed a personal guarantee to secure the repayment of financial assistance availed by the Corporate Debtor from the Applicant/Creditor. Pursuant to default in repayment of debt by the Corporate Debtor, the personal guarantee of *Mr. Ajay Kumar Singh*, being the personal guarantor was invoked and accordingly, the Personal Guarantor was called upon to repay the debt of the Corporate Debtor, which it failed to repay.
3. It has been submitted that the loan was sanctioned to the Corporate Debtor under a facility agreement dated 27.03.2018 by the Applicant Bank with a

Sd-

Sd-

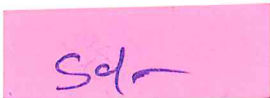
limit of Rs. 25 crores for a period of 36 months. A deed of personal guarantee dated 27.03.2018 was executed by the Personal Guarantor i.e. *Mr. Ajay Kumar Singh* in favour of the Applicant Bank. A list of Security Documents as executed have been annexed with this application.

4. The Applicant by its letter dated 19.12.2019 notified the Corporate Debtor that it had defaulted on payment of interest amount of Rs. 11,85,650 since 28.11.2019 and called the Corporate Debtor to make payment of the outstanding amount of Rs. 12,02,022 (inclusive of the default interest of Rs. 16,372). The Applicant further by its emails dated 23.12.2019, 24.12.2019 & 26.12.2019 called upon the Corporate Debtor to make payment of the overdue interest instalment for Nov. 2019.
5. On 03.01.2020, the Applicant deposited with its bankers three cheques issued by the Corporate Debtor and drawn on Indian Overseas Bank towards the outstanding principal and interest amounts under the facility. The cheques were returned by the Applicant's Bank due to insufficient funds on 04.01.2020. The Applicant, in light of the above, issued a notice dated 07.01.2020 to the Corporate Debtor and its personal guarantors including the debtor herein under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. The Corporate Debtor and its personal guarantors including the debtor were called upon to make payment of Rs. 2,36,24,844/- along with interest. They were intimated that failure to make payment would result in the Applicant initiating necessary action under the NI Act.

Sd/-

Sd/-

6. The Applicant received part payment amounting to a sum of Rs. 2,21,74,086 (being total amount due of Rs. 2,23,23,059 less TDS amounting to Rs. 1,48,973) on 04.03.2020, 06.03.2020, 07.03.2020, 11.03.2020 and 13.03.2020 towards the principal amount and interest amount outstanding as on Dec. 2019. It is stated that the default interest on the delay in payment of the above instalment for Dec. 2019 to March 2020 was not included in the above payment. The Corporate Debtor vide its email dated 12.05.2020 requested the Applicant to waive the default interest of Rs. 20,64,125 charged by it.
7. The Applicant addressed an email dated 28.10.2020 to the Corporate Debtor in which the Applicant stated that an instalment amount of Rs. 2,33,72,992 was due and payable as on Sep. 2020 as per the revised Repayment Schedule. The Applicant called upon the Corporate Debtor to make immediate payment towards the said outstanding amount.
8. Finally, on 22.02.2021, the Applicant issued notices to the Corporate Debtor and its Personal Guarantors including the Debtor herein to jointly or severally make payment of Rs. 12,09,69,855. The above notices were issued in the format prescribed by the IBC. The said notices were also issued vide emails dated 23.02.2021. Further, the Applicant issued a notice dated 02.03.2021 to the Corporate Debtor and its Personal Guarantors including the Debtor herein in respect of dishonoured cheques of the Corporate Debtor



and called upon to make payment of the entire outstanding amount under the Facility being Rs. 11,92,91,681/-.

9. The Corporate Debtor by its reply dated 17.03.2021 reiterated that it was facing difficulties on account of Covid – 19 Pandemic. The Corporate Debtor assured that it would make payment of Rs. 2,00,00,000 by the end of March 2021 and regularise its account.
10. The Corporate Debtor thereafter paid Rs. 25,00,000 and Rs. 40,00,000 to the Applicant on 30.03.2021 & 31.03.2021 towards the outstanding amount for the month of Sep. 2020. The Personal Guarantor on behalf of Corporate Debtor vide its letter dated 16.04.2021 admitted that out of the promised Rs. 2,00,00,000, the Corporate Debtor was only able to make payment of Rs. 65,00,000. The Corporate Debtor sought further time to make payment of balance amount by the end of April 2021.
11. However, the Applicant did not receive any payment from the Corporate Debtor since 31.03.2021. Neither the Corporate Debtor nor the Personal Guarantor have made any payments towards the Facility since 31.03.2021. As on 27.04.2021, an amount of Rs. 11,76,51,303 is due and payable jointly or severally by the Corporate Debtor or its Personal Guarantors including the Debtor herein. The Applicant had also filed Commercial Suit (L) No. 11004 of 2021 before the Hon'ble Bombay High Court which is pending adjudication.

12. In Part III of the Application, the total debt is reflected is Rs. 11,94,50,226/- (Rupees Eleven Crores Ninety- Four Lakhs Fifty Thousand Two Hundred Twenty- Six Only) as on 17.05.2021 and the date on which debt became due is 28.09.2020.
13. We have heard the learned counsels and perused the application & documents on record.
14. This Adjudicating Authority decided IA Nos. 229, 227 & 226/JPR/2021 whereby the Application filed by the Applicant was rejected on the ground of preliminary objections filed by the Respondent/ Personal Guarantor. The Hon'ble NCLAT vide order dated 18.01.2023 has set aside the order dated 22.02.2022 passed by this Adjudicating Authority.
15. It is observed that the Personal Guarantor has defaulted in payment of the dues within the statutory period of 14 days from the service of the demand notice dated 22.02.2021. Consequently, the Applicant has filed this application under Section 95 of the Code read with Rule 7 of the IBC Rules, 2019 against *Mr. Ajay Kumar Singh*, the Personal Guarantor of the Corporate Debtor. Hence, we are inclined to allow this Application and appoint the Resolution Professional as envisaged under Section 97 of the Code.
16. It is clear that from the date of filing of this application i.e., 04.06.2021, that Interim Moratorium commences as stipulated under Section 96(1) of the Code in relation to all the debts of the Personal Guarantor. During the



Interim Moratorium period: (i) any pending legal action or proceedings in respect of any debt shall be deemed to have been stayed; and (ii) the creditors of the 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 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.

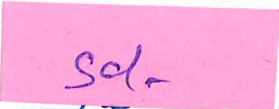
17. It shall be noted that the appointment of the Resolution Professional under Section 97 of the Code is critical and essential for the Creditor but also relevant to safeguard the assets of the Personal Guarantor in terms of the provisions of the Code. The Applicant may propose the name of a Resolution Professional to be appointed as Resolution Professional ('RP'), but it is not obliged to do so. In the instant case, the Applicant has not proposed the name of any person to be appointed as RP. Hence, this bench will appoint the RP from the pool of RPs empanelled with the IBBI. Therefore, the Bench is appointing Mr. Kamal Kumar Jain duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-001/IP-P00092/2017-18/10192 (email: cakamaljain07@gmail.com), is hereby appointed as the Resolution Professional. The said RP is directed to file the written consent to act as Resolution Professional in Form – 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.



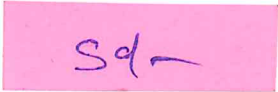

18. The Applicant is directed to serve the copy of this order along with copy of the Application and documents immediately on the Insolvency and Bankruptcy Board of India and file proof of service including dispatch and delivery thereof. Also, a copy of this Order and Application shall be served on the Personal Guarantor for limited purpose of presence on the next date of hearing and to be informed about the commencement of moratorium. The Personal Guarantor is directed to co-operate with the Resolution Professional appointed hereunder and provide all relevant information to the concerned Resolution Professional. The Personal Guarantor shall also furnish a copy of his last 3 Income Tax Returns and latest statement of affairs including, but not limited to position of assets and liabilities together with relevant documents to the Resolution Professional.
19. The Resolution Professional is directed to exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. The Resolution Professional is directed to make the 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 Creditor as soon as the same is filed before this Authority.



20. The registry is directed to provide a copy of this order to the parties as well as mail the same to the Resolution Professional.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**

January 08, 2024