

**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)- 71/94(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:**

**KESAR SINGH SHEKHAWAT**

...Applicant

**VERSUS**

**ORIENTAL BANK OF COMMERCE**  
**(NOW PUNJAB NATIONAL BANK)**

...Respondent

**MEMO OF PARTIES**

**KESAR SINGH SHEKHAWAT**

*Personal Guarantor of M/s Super Shiv  
Shakti Chemicals Pvt. Ltd.*

C-112, Near Shyam Mandir, Shastri  
Nagar, Bhilwara-311001, (Rajasthan)

...Applicant/  
Personal Guarantor

**VERSUS**

**ORIENTAL BANK OF COMMERCE**  
**(NOW PUNJAB NATIONAL BANK)**

Regional Office: Plot No. 43, First Floor,  
10<sup>th</sup> E-Road, Sardarpura, Jodhpur-  
342003

...Respondent

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**FOR THE PETITIONER(S)** : Nitesh Shrivastava, Adv.  
**FOR THE RESPONDENT(S)** : Vikas Jain, Adv.

**Order Pronounced On: 12.03.2024**

**ORDER**

**Per: Shri Rajeev Mehrotra, Technical Member**

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 *Mr. Kesar Singh Shekhawat*. The prayer made is to initiate the Insolvency Resolution Process in respect of *Mr. Kesar Singh*, being the Personal Guarantor for *M/s Super Shiv Shakti Chemicals Pvt. Ltd.* ('Corporate Debtor'/'Company').
2. It is submitted that the Corporate Debtor had availed term loan facilities in the form of Cash Credit amounting to Rs. 5 Crores from *Punjab National Bank* ('PNB') vide Loan cum Hypothecation Agreement dated 14.01.2013. Thereafter, the Corporate Debtor availed Additional Financial Facility in the form of Ad-hoc SLC amounting to Rs. 9 Crores from PNB vide Supplemental Loan cum Hypothecation Agreement executed on 23.10.2013.
3. Thereafter, PNB renewed the existing credit facilities with enhancement from Rs. 9 Crores to 11.25 Crores. Subsequently, the existing credit facility

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was renewed with enhancement from Rs. 11.20 Crores to Rs. 13.50 Crores. Again, on the request of the Corporate Debtor, the said outstanding credit facility was renewed and accordingly, the loan account of the Corporate Debtor was restructured vide sanction letter dated 28.03.2016. The Corporate Debtor also availed an additional financial facility from PNB of Rs. 3.64 Cr. vide sanction letter dated 23.10.2013 and later the Corporate Debtor availed an additional financial credit facility from PNB of Rs. 10 Cr. vide sanction letter dated 18.02.2015.

4. It has been contended that due to unavailability of funds, the account of the Corporate Debtor was classified as Non-Performing Asset ('NPA') by PNB on 30.03.2017 and recovery proceedings were initiated by PNB due to non-payment of debt by Corporate Debtor. Accordingly, notices were issued under Section 13(2) of SARFAESI Act, 2002 on 05.02.2019 requesting repayment of the debt within 60 days from the receipt of such notice.
5. 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.

6. It is seen that the Applicant in Part III of the application has mentioned the amount of default of the Corporate Debtor i.e. *M/s Super Shiv Shakti Chemicals Private Limited* as on 04.02.2019 is Rs. 30,16,69,673.22/- (Rupees Thirty Crores Sixteen Lakhs Sixty-Nine Thousand Six Hundred Seventy-Three and Twenty-Two Paise Only) and the date of default along with the date when the Debt fell due is 30.03.2017.
7. The Application has been filed pursuant to the criterion envisaged under Section 94(5) of the Code, 2016 as 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 it does not fall under the prohibiting criteria mentioned under the provisions of Section 94(4) of the Code. The Applicant is not an undischarged bankrupt; not undergoing a fresh start process; not undergoing insolvency resolution process or not undergoing bankruptcy process.
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 Section 95. Accordingly, in the instant matter interim moratorium

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commences from 24.11.2023 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/Personal Guarantor 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.

9. 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 had provided a Personal Guarantor. It is seen that the Guarantor has annexed proof of service to the Creditors and Corporate Debtor.
10. The Applicant has proposed the name of Resolution Professional ('RP'); 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](mailto:mhswr.shyam@gmail.com) and phone number +91 9783368645 as the Resolution Professional in this present

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matter. The Written Consent of the said RP is duly annexed with the Application.

11. 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. The RP is directed to re-check the availability of all information as per the relevant Rules & Forms. Further, the RP 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 Debtor 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. A Copy of this order be supplied to the Applicant. The Applicant and its counsel are directed to serve a copy of this Order along with a Copy of the Application and documents to the Resolution Professional by all modes for information.

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13. 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.
14. In the circumstances, prayer for appointment of RP is allowed.



**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,  
TECHNICAL MEMBER**