IN THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH, NEW DELHI

IA-905/2022

In

Company Petition (IB) No. 435(PB)/2021

Under 96, 97, 99 & 100 of IBC, 2016 r/w Rule 6 (1) of the IB (Application to Adjudicating Authority for IRP for Personal Guarantors to CD) Rules, 2019.

In the matter of:

ALCHEMIST ASSET RECONSTRUCTION COMPANY LTD.
(Acting as Trustee of Alchemist XXVIII Trust)
A-270, 1st and 2nd Floor, Defence Colony, New Delhi-110024

.... Financial Creditor

Vs.

Mrs. Nita Puri
(Personal Guarantor of Corporate Debtor,
M/s. Moser Baer India Ltd.)
A-187, New Friends Colony, New Delhi-110020

.... Personal Guarantor of Corporate Debtor

In the matter of IA-905/2022

SAPNA MOHAN GARG

..... *Resolution Professional/Applicant*

ORDER DELIVERED ON: 04.04.2022

CORAM:

Dr. P.S.N PRASAD,

HON'BLE MEMBER (JUDICIAL)

SHRI AVINASH K. SRIVASTAVA,

HON'BLE MEMBER (TECHNICAL)

Appearance

For the Applicant: Mr. Palash Singhai, Mr. Ashu Kansal, Advocates.
For Personal Guarantor: Ms. Varsha Banerjee, Advocate.

ORDER

Per: Dr. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

1. Under consideration is application IA-905/2022, which is a report filed by the Resolution Professional namely Mr. Sapan Mohan Garg, in accordance with Section 99 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016"). Originally, the Petitioner, namely, M/s. Alchemist Asset Reconstruction Company Limited (Financial Creditor), had filed a petition under Section 95(1) r/w sections 96, 97, 99 & 100 of IBC, 2016 r/w Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019 (the Rules,2019), against Mrs. Nita Puri (Personal Guarantor), who is the Personal Guarantor of the Financial Creditor in relation to the credit facility availed by the company M/s. Moser Baer India Limited (Corporate Debtor) for an amount of Rs. 3,45,33,52,893.39 (Rupees Three Forty Five crore Thirty Three Lakh Fifty Two Thousand Eight Hundred Ninety Three Paise Thirty Nine)

2. On presentation of the Petition CP (IB) No. 435(PB)/2021, by the Financial Creditor, this Adjudicating Authority vide order dated 01.11.2021, appointed the Resolution Professional viz., Mr. Sapan Mohan Garg, as proposed by the Financial Creditor in the Part IV of Form C, having Registration No. IBBI/IPA-002/IP-N00315/2017-18/10903, having Email Id: sapan10@yahoo.com, Mobile No.

9810502994, directed to examine the application referred in Section 95 of IBC and by duly following Sub Section(2) of Section 99 of IBC,2016 file a report under Section 99 of IBC, 2016 and the interim moratorium was imposed. The Report under Section 99 of IBC, 2016 has been filed by him through IA-905/2022 in CP (IB) - 435/PB/2021, recommending the **admission of the application** filed under section 95 of IBC, 2016. The grounds for admission of the application recorded in the Report are as follows: -

- The Insolvency Petition satisfies the requirement of Section 95 of IBC, 2016 and has been filed in the requisite form, in terms of Rule 7(2) of the Rules, 2019, supported by requisite fee and documents.

- The Personal Guarantor has committed default in repayment of her debts; therefore, the requirement as set out under Section 95(1) is satisfied.

- That the debts mentioned in the application are not excluded debts.

- That the Personal Guarantor is not eligible for a fresh start process provided under Chapter II of IBC, 2016.

3. Therefore, based on the reasons recorded in the report submitted by the Resolution Professional, the Petition i.e., IB - 435(PB)/2021, filed under the provisions of Section 95 of IBC, 2016, is hereby ***admitted*** under section 100 of the IBC, 2016. The Insolvency Resolution Process is initiated against the Personal

Guarantor and the moratorium is declared, which begins with the date of admission of the Petition and shall cease to have effect at the end of the period of 180 days, as provided under Sec 101 of IBC, 2016. During the moratorium period;

a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and

b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

4. The Resolution Professional viz., Mr. Sapan Mohan Garg, who has been appointed under Section 95 vide Order dated 01.11.2021, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT Delhi, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the State where the Personal Guarantor

resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on this Authority's website and the other shall be affixed in the premises of this Authority.

5. The Resolution Professional in exercise of the powers conferred under Section 104 of IBC, 2016, shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105, which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of IBC, 2016.

6. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional *is of the* opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-section (1) of Section 106 of the IBC, 2016, for which at least 14 days' notice to the creditors [as per the list prepared] shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the IBC, 2016.

7. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of the IBC, 2016 and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the code of Conduct provided under Section 208 of the IBC, 2016.

8. In terms of the above, **CP(IB)-435(PB)/2021**, filed under Section 95 (1) of the IBC, 2016 is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor i.e., Mrs. Nita Puri.

-Sd-

P.S.N PRASAD
(Member Judicial)

-Sd-

AVINASH K. SRIVASTAVA
(Member Technical)