

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI VELAMUR G. VENKATA CHALAPATHY,
HON'BLE TECHNICAL MEMBER

IA(IBC) No. 12/JPR/2024;
IA(IBC) No. 187/JPR/2024
CP No. (IB)- 77/94(1)/JPR/2023

(Under Section 94 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:

MRS. SHAHNAJ BANO

...Applicant/Debtor

VERSUS

BANK OF BARODA

...Respondent/ Creditor

AND IN THE MATTER OF:
IA NO. 12/JPR/2024

MEMO OF PARTIES

MRS. SHAHNAJ BANO
Through Resolution Professional
Mr. Shyam Sunder Maheshwari
Flat No. F-2, Plot No. 35, Shanti Vihar,
Kalyan Nagar, Tonk Road, Jaipur,
Rajasthan-302029.

...Applicant/Resolution Professional

VERSUS

IA(IBC) No. 12/JPR/2024
IA(IBC) No. 187/JPR/2024

In

CP No. (IB)- 77/94(1)/JPR/2023

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BANK OF BARODA

R.C. Vyas Colony Branch, Bhilwara,
Rajasthan-311001.

...Respondent

AND IN THE MATTER OF:
IA No. 187/JPR/2024

MEMO OF PARTIES

BANK OF BARODA

R.C. Vyas Colony Branch, Bhilwara,
Rajasthan-311001.

...Applicant

VERSUS

MRS. SHAHNAJ BANO

Personal Guarantor of M/s Simna
Exim India Pvt. Ltd.
L-13, UIT Quarter, Bhopalpura Road,
Shastri Nagar, Bhilwara, Rajasthan-
311001.

...Non-Applicant

For the Applicant

For the RP

For the Respondent

: Nitesh Srivastava, Adv.

: Karan Pratap Singh, Adv.

: Shivangshu Naval, Adv.
Akanksha Noval, Adv.

Order Pronounced On: -18.12.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The Applicant, namely *Mrs. Shahnaj Bano* has filed the Application bearing *CP No.(IB)-77/94(1)/JPR/2023*, under Section 94 (1) of the Insolvency and Bankruptcy Code 2016 (the 'IBC' / 'Code') r/w Rule 6 of the Insolvency

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and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 ('Rules'), seeking initiation of Insolvency Resolution Process ('IRP') against the Applicant/ Debtor who is the Personal Guarantor of the Corporate Debtor namely *M/s Simna Exim India Pvt. Ltd.*, for an amount of Rs. 1,20,99,319.91/- (Rupees One Crore Twenty Lakh Ninety-Nine Thousand Three Hundred Nineteen and Ninety-One Paisa Only) and the amount of default of Home Loan is Rs. 59,83,680.38/- (Rupees Fifty- Nine Lakhs Eighty-Three Thousand Six Hundred Eighty and Thirty-Eight Paisa Only) so, the total amount of default is Rs. 1,80,83,000.29/- (Rupees One Crore Eighty Lakhs Eighty-Three Thousand and Twenty-Nine Paisa Only).

2. On presentation of the application by the Applicant, this Authority *vide* Order dated 20.12.2023 had appointed *Mr. Shyam Sunder Maheshwari*, bearing Registration No. IBBI/IPA-001/IP-P-02115/2020-21/13321 as the Resolution Professional and directed him to file a report under Section 99 of IBC, 2016 which has been filed by him through *IA(IBC) No. 12/JPR/2024*.
3. The Present Application bearing *IA(IBC) No. 12/JPR/2024* has been filed by the Resolution Professional ('RP') under Section 99(1) read with Section 99(7) of the IBC recommending the admission of the Application filed by the Debtor under Section 94 of the Code seeking commencement of the Insolvency Resolution Process against himself. The grounds for admission of the Application as per the Report are as follows: -

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- 3.1. The Personal Guarantor has committed default in repayment of his debts; therefore, first requirement as set out under Section 94(1) is satisfied.
- 3.2. The Application is submitted in respect of debts which are not excluded debts; hence requirement set out under Section 94(3) is complied with.
- 3.3. The Debtor does not fall under the prohibited criteria mentioned under Section 94(1) of the Code and is not:
- a. an undischarged bankrupt;
 - b. undergoing a fresh start process;
 - c. undergoing an insolvency resolution process; or
 - d. undergoing a bankruptcy process.
- 3.4. There is no Application under Chapter III of the Code which has been admitted in respect of the Applicant/ Debtor during the period of twelve months preceding the date of submissions of the said Application under Section 94 of the Code.
- 3.5. The Application has been duly filed in the prescribed "Form A" Along with requisite fee of Rs. 2000/- and satisfies the requirement under Section 94(6) of the Code r/w Rule 6(1) of the Rules.
- 3.6. The Debtor is not eligible under Section 80 for a fresh start process as provided under Chapter II of the IBC.
4. The compliances of the relevant sections of the Code are as follow:

<i>Sr. No.</i>	<i>Requirements under Relevant provisions of Section 99 of the Code</i>	<i>Compliance by RP</i>
i.	Section 99 (1): The RP shall examine the application referred u/s 94 or 95 within 10 days of appointment and submit a report to Adjudicating Authority for approval/rejection of the application	YES The RP submitted that the present report is prepared in compliance with the requirements of Section 99(1) of the Code
ii.	Section 99 (2): Where the application has been filed under Section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing – a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor; b) evidence of encashment of a cheque issued by the debtor; or a signed acknowledgment by the creditor accepting receipt of dues.	Not Applicable
iii.	Section 99(3): Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.	Not Applicable
iv.	Section 99(4): For the purposes of examining an application, the resolution professional may seek such further information or explanation	YES The Resolution Professional sought certain clarification/information from all the Financial Creditors and

	in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.	Applicant through e-mails. Copy of the said emails are annexed as Annexure-A2 and A4 of this Application.
v.	Section 99(5): The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.	YES E-mail received on 28.12.2023 from the Financial Creditor and email dated 29.12.2023 from Personal Guarantor providing information in terms of section 99(4) and (5) of IBC, 2016.
vi.	Section 99(6): The resolution professional shall examine the application and ascertain that - (a) the application satisfies the requirements set out in Section 94 or 95; (b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).	YES RP submitted that the present application satisfies the requirements of provisions of Section 94 as has been provided in detail hereinabove in this report.
vii.	Section 99(7): After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.	YES RP submitted that the present application satisfies the requirements of provisions of Section 94 as is required to be examined under Section 99(6) of the Code. The RP submitted that based on his examination the present application deserves to be

		admitted under Section 100 of the Code and this Hon'ble Authority may pass appropriate orders in this regard.
viii.	Section 99(8): Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under Section 94 be treated as an application under Section 81 by the Adjudicating Authority.	Not Applicable The RP submitted that the provisions of Section 99(8) of the Code does not apply to the present case on hand. Application is filed by the debtor under Section 94 of the code.
ix.	Section 99(9): The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	YES RP submitted that the present report is being presented under Section 99(7) of the Code to this Hon'ble NCLT with a recommendation of accepting the present application as the Personal Guarantor/debtor has not repaid the debt due to the Creditors.
x.	Section 99(10): The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.	YES RP submitted that he has complied with the requirement of filing a copy of this report prepared under Section 99(7) of the Code to the Creditor. Copy of the said email dated 31.12.2023 serving copy of the Report on the creditor is attached herewith at Pages No.117.

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5. The Financial Creditor i.e., Bank of Baroda ('Bank') has filed its reply to the aforementioned Report *vide*, Diary No. 2105/2024 dated 30.08.2024 wherein it is submitted that the RP has failed to consider in his report that the Applicant has taken the date of default as 17.08.2023 being the date of demand notice. However, this is contrary to the Applicant's assertions in the reply to the notice dated 14.10.2023, issued under Section 13(2) of the SARFAESI Act, 2002, where the Applicant clearly denied any event of default. Further, the Applicant has called upon the Respondent Bank to withdraw its demand notice pursuant to its declaration of the account as Non-Performing Asset (NPA) on 30.06.2023. further it is mentioned that the intention of the Applicant/Personal Guarantor is not insolvency resolution, but to stall and frustrate the recovery process undertaken by the Bank under SARFAESI Act.
6. In the meantime, the Financial Creditor i.e., Bank of Baroda has filed an *IA (IBC) No. 187/JPR/2024 vide* Diary No. 838/2024 dated 08.04.2024, under Section 65 of the Code, 2016 r/w Rule 11 of the NCLT Rules, 2016 for seeking dismissal of the Petition. The facts of the instant IA are as follows:
- 6.1. It is submitted that the Bank is a secured creditor and the sole financial creditor as per the books of accounts maintained by the Corporate Debtor. The total outstanding amount legally due and payable to the Bank by the Corporate Debtor as on 13.08.2023 was Rs. 1,20,99,319/- (Rupees One Crore Twenty Lakh Ninety-Nine Thousand Three

Hundred Nineteen only) along with future interest at the contractual rate on the aforesaid amount together with incidental expenses, cost, charges etc.

- 6.2. Further, it is submitted that the said term loan was granted for the purpose of purchasing plant and machinery and other miscellaneous fixed assets and for installing new plant and machinery. Cash Credit facility was granted for the purpose of meeting working capital requirement.
- 6.3. However, the Corporate Debtor has slyly transferred the loan amount to the personal accounts of its directors, personal guarantors, relatives and sister concern (Simna Mineral Industries, through its proprietor *Samjida Bano*, *Aamna Enterprises* through its proprietor *Mukhtyar Ali Quazi*) which reeks of its mala fides and clearly shows its intention to defraud the Bank.
- 6.4. Subsequently, the Corporate Debtor has wilfully defaulted in repayment of loan and has filed the present application for purposes other than resolution. The intent of the Corporate Debtor is to stall and frustrate the recovery proceedings initiated by the Bank under the SARFAESI Act, 2002. The demand notice dated 17.08.2023 under Section 13(2) of SARFAESI Act issued by the Bank to the Corporate Debtor. In reply to the said notice, the Corporate Debtor has denied that it has not made any default in repayment of loan.

6.5. Further, it was contended that the Corporate Debtor under the SARFAESI proceeding denied that it defaulted in repayment of the loan and called upon the Bank to withdraw its demand notice dated 17.08.2023 which was given in pursuance to declaration of NPA on 30.06.2023. In contrary to its earlier stance, the entire basis of default taken by the Corporate Debtor in the instant proceeding is based on the demand notice. Taking such contrary stances shows its intention to defraud the Bank and to stall the recovery proceedings.

6.6. Hence, it is apparent that the Corporate Debtor has not approached this Adjudicating Authority with clean hands and has knowingly and deliberately suppressed and concealed material facts to mislead this Adjudicating Authority and obtain reliefs from it in an oblique manner. The Corporate Debtor has diverted the loan amount sanctioned to it by the Respondent Bank by transferring the same into personal accounts of the directors, its sister concern and guarantors. The captioned Petition is a blatant attempt of the promoters- directors of the Corporate Debtor conspiring to play fraud upon this Adjudicating Authority as well as the Respondent Bank with the sole intention of derailing, stalling and frustrating the Respondent Bank's recovery process under the SARFAESI Act, 2002.

7. Thereafter, the Financial Creditor i.e., Bank of Baroda has also filed its objections *vide* Diary No. 2104/2024 dated 30.08.2024 to the Application

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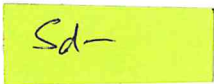
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under Section 94(1) of the IBC, 2016 wherein it reiterated its earlier stance made in the *IA (IBC) No. 187/JPR/2024* for seeking dismissal of the main Petition. Additionally, the Financial also relied upon the judgement of the Hon'ble Supreme Court in the matter of *Ramjas Foundation and Anr. Vs Union of India & Ors.* in (2010) 14 SCC 38.

8. Subsequently, the Applicant has filed reply to the *IA (IBC) No. 187/JPR/2024* vide Diary No. 2745/2024 dated 08.11.2024 and submitted that the Bank has not stated that there is no default. Instead, the Bank has merely stated that the Personal Guarantor utilized the loan for personal benefit, which is denied and proper explanation has already been given by the Corporate Debtor. Further, the Bank has attempted to present ordinary business transactions as fraudulent without providing any supporting documents or details. However, it is submitted that the Personal Guarantor has not diverted any loan amount sanctioned by the Bank. The loan amount has been used for the working capital requirements of *M/s Simna Exim India Pvt. Ltd.* Additionally, the Corporate Debtor has purchased plant and machinery for which the loan was availed, and the loan amount has not been diverted. All the transactions are legitimate business transactions and can be substantiated through tax invoices against which payments were made for the supply of goods by *M/s Simna Mineral Industries* and *M/s Aamna Enterprises*. Copies of the tax invoices are annexed as Annexure-R1 (Colly) to this reply.

9. We have heard the Ld. Counsels for the parties and perused the averments made in the Petition, Reply, Affidavits, and Interlocutory Application along with the documents enclosed therein.
10. The instant Petition bearing *CP(IB) No. 77/94(1)/JPR/2023* has been filed under Section 94 of the Code, 2016 seeking initiation of the insolvency resolution process against the Personal Guarantor/Debtor. As per scheme of the Code after filing of any application under Section 94, this Adjudicating Authority shall appoint a Resolution Professional for submitting a Report under Section 99 of the Code suggesting admission/rejection of the Petition. Subsequent to the filing of the report the Adjudicating Authority is required to pass an order for admission/rejection of the Application under Section 100 as the case may be.
11. In the instant case, before delving into the merits of the Petition filed under Section 94 of the Code, it is incumbent to first deal with the Application filed by the Bank under Section 65 of the Code, 2016 alleging malicious and fraudulent initiation of the proceedings.
12. The Respondent Bank has taken the objection that the Personal Guarantor has filed Section 94 Petition maliciously and illegally to circumvent the due process of law and sabotage or subvert the proceedings under the SARFAESI Act, 2002. Further, it has been alleged that the Personal Guarantor/Debtor had received a considerable amount from the Corporate

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Debtor. Moreover, it has been alleged that the Corporate Debtor has intentionally defaulted in the repayment of the loan.

13. In so far as the contention of the Bank with regards to pendency of proceeding under the SARFAESI Act, 2002 against the Personal Guarantor before the learned Debt Recovery Tribunal is concerned, it is no more res-integra that pendency of a SARFAESI proceeding will not come in the way of the proceedings under the Code. Further, the same cannot be a ground to reject an application under Section 94, if the application is complete in all other aspects as provided under the provisions of law.
14. Further, a perusal of the alleged transactions which the Bank has alleged fraudulent and malicious initiation of the IRP reveals that the individual transactions do not involve any substantial sum of money and the same were entered on different occasions spanning over a year. Further, we cannot rule out the possibility that the alleged transactions can be a part of normal day-to-day business transactions. Moreover, at this stage given the dearth of the relevant material on record, it cannot be determined that the alleged transactions were undertaken for fraudulently initiating the CIRP. Thus, we are of the opinion that the instant IA does not fulfil the requirements as provided under Section 65 of the Code, 2016. Therefore, we are not inclined to grant any reliefs as sought in *IA(IBC) 187/JPR/2024*.
15. In view of the foregoing, the captioned Petition filed under Section 94 of the Code is maintainable.

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16. In the instant matter, the Resolution Professional has filed its Report under Section 99 *vide* Diary No. 23/2024 dated 02.01.2024 recommending the admission of the Petition filed under Section 94 of the Code. From the report there does not appear any request of the Resolution Professional for issuance of the instructions for the purpose of conducting negotiations between the debtor and creditors for arriving at a repayment plan. Therefore, based on the reasons recorded in the report submitted by the Resolution Professional, the application i.e., *IA(IBC) No. 12/JPR/2024* filed under the provisions of Section 94 of IBC is hereby admitted under Section 100 of the IBC.
17. Resultantly, Insolvency Resolution Process is initiated against the Applicant/Personal Guarantor and moratorium is declared, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC. During the moratorium period *inter-alia* the following provisions shall be in effect;
- 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;

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- 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.
18. The Resolution Professional *viz., Mr. Shyam Sunder Maheshwari*, who has been appointed under Section 97 *vide* order dated 20.12.2023, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, 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. The publication of the notice shall be made in newspapers, one in English and the other in Vernacular which have wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.
19. The Resolution Professional in exercise of the powers conferred under Section 104 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 Authority within a period of 21 days from the last date of submission of claims as provided under Section 106.

20. 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, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.
21. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this 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.
22. In terms of the above, *CP No. (IB)- 77/94(1)/JPR/2023* filed under Section 94 of the IBC, is admitted and the Insolvency Resolution Process stands initiated against the said Debtor/Personal Guarantor *i.e. Mrs. Shahnaj Bano*.

23. In view of the forgoing *IA(IBC) No. 12/JPR/2024* is taken on record and stands disposed off.

24. Accordingly, *IA(IBC) No. 187/JPR/2024* stands rejected and disposed off.

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DEEP CHANDRA JOSHI
JUDICIAL MEMBER

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VELAMUR G. VENKATA CHALAPATHY,
TECHNICAL MEMBER