

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

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

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

CP No. (IB)- 72/94(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:

BHUPENDRA SINGH SHEKHAWAT

...Applicant/ Debtor

VERSUS

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

...Respondent/ Creditor

MEMO OF PARTIES

BHUPENDRA SINGH SHEKHAWAT

Personal Guarantor to M/s Super Choco Foods LLP
C-112, Shastri Nagar, Bhilwara-
311001, (Rajasthan)

...Applicant

VERSUS

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

Branch Office: Circle SASTRA Center,
3rd Floor, LIC Building, Sub City Center
Reti Stand, Udaipur, Rajasthan

...Respondent

FOR THE PETITIONER(S) : Nitesh Shrivastava, Adv.

FOR THE RESPONDENT(S) : Vikas Jain, Adv.

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Order Pronounced On: 12.03.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial 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 namely *Shri Bhupendra Singh Shekhawat*. The Applicant is prayed to initiate the Insolvency Resolution Process in respect of *Shri Bhupendra Singh Shekhawat*, being the Personal Guarantor for *M/s Super Choco Foods LLP* ('Corporate Debtor'/'Company').
2. It is submitted that the Corporate Debtor availed various credit facilities from the Punjab National Bank ('PNB'). The Corporate Debtor availed working capital facilities in the form of Term Loan amounting to Rs. 3.75 Crores vide Loan cum Hypothecation Agreement dated 06.10.2015. Thereafter, the Corporate Debtor availed an Additional Financial Facility in the form of Cash Credit amounting to Rs. 1 Crore vide Supplemental Loan cum Hypothecation Agreement which was executed on 06.10.2015.
3. Further, it is contended that due to unavailability of funds with the Corporate Debtor, the account of the Corporate Debtor was classified as

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Non-Performing Asset ('NPA') by PNB on 31.10.2017. The recovery proceedings were initiated by PNB due to non- payment of debt and accordingly, notices under Section 13(2) of SARFAESI Act, 2002 to the Corporate Debtor dated 07.11.2017 were issued requesting repayment of the debt within 60 days from the receipt of such notice.

4. Upon continuous default in repayment of the instalment/ interest/ principal debt in loan account by the Corporate Debtor, the PNB took possession of immovable property of Corporate Debtor vide possession notice dated 15.02.2018. Thereafter, PNB published the auction sale notice in newspapers multiple times, latest being published on 27.10.2023, for sale all the secured assets mortgaged in respect of the abovesaid loan account of Corporate Debtor for which auction was proposed to be held on 17.11.2023.
5. On the request of the Corporate Debtor, One Time Settlement ('OTS') proposal amounting to Rs. 2.09 Crores was accepted by the Bank's competent authority vide letter dated 23.02.2023. Subsequently, the Corporate Debtor received a letter dated 13.03.2023 from PNB stating that out of total token money of Rs. 31,35,000/- (Thirty-One Lakhs Thirty-Five Thousand Only), a sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) was deposited by the Corporate Debtor. Further, the letter served as a reminder to the Corporate Debtor to deposit the remaining OTS amount of

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Rs. 1,99,00,000/- (One Crores Ninety-Nine Lakhs) on or before 25.03.2023 failing which the Bank will have no option but to resume actions under SARFESI Act. Another OTS proposal was submitted by the Corporate Debtor to PNB vide letter dated 06.11.2023 wanting to settle the account by payment of Rs. 1.9 Crores for full and final settlement of debt owed.

6. It is submitted that the Personal Guarantor/Applicant has not been able to make payment as demanded by lender, as a result of which the Personal Guarantor/Applicant is a debtor in default and is accordingly eligible to file the instant application.
7. It is seen that the Applicant in Part III has mentioned that the amount of default of *M/s Super Choco Foods LLP* as on 31.10.2017 is Rs. 3,06,06,417.90/- (Rupees Three Crores Six Lakhs Six Thousand Four Hundred Seventeen and Ninety Paise Only) and the date of when the debt became due and default occurred is 31.10.2017.
8. 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 he does not fall under the prohibiting criteria

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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.

9. 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 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/debtor 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.
10. 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 is a personal guarantor. It is seen that the Guarantor has annexed proof of service to the creditors and Corporate Debtor.

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11. 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 and phone number +91 9783368645 as the RP in the present matter. The Written Consent of the said RP is duly annexed with the Application.
12. 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 availability of all information as per the relevant Rules & Forms. The RP is also 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.
13. A 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

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Application and documents on the Resolution Professional by all modes for information.

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

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**RAJEEV MEHROTRA,
TECHNICAL MEMBER**