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)- 11/95/JPR/2024

IN THE MATTER OF:

BANK OF BARODA

...Applicant

VERSUS

MR. AJAY SINGH CHAUHAN **...Respondent**

MEMO OF PARTIES

BANK OF BARODA
ROSARB, II Floor, Baroda Bhawan, 13, Airport Plaza, Durgapura, Tonk Road, Jaipur- 302018 (Rajasthan)

...Applicant

VERSUS

MR. AJAY SINGH CHAUHAN, PG
Of M/s Shri Shyam Madhav Polybags Limited Plot No. 251, Ward No. 25, Opp. Senior Secondary School, Paneriyon ki Madri, Manwa Khera (Rural) Girwa, Udaipur- 313001 (Rajasthan)

Currently at:
301, Building No. 1, Landmark Treasure Tower, Badgaon, Udaipur- 313001 (Rajasthan)

Also at:
403, Building No. 1, Landmark Treasure Tower, Badgaon, Udaipur- 313001 (Rajasthan)

...Respondent

Sd/-

Sd/-

FOR THE APPLICANT(S) : Anubha Singh, Adv.

ORDER

1. The present application is filed by *Bank of Baroda* ('Creditor'/ 'Applicant') with a prayer to initiate Insolvency Resolution Process against *Mr. Ajay Singh Chauhan* ('Personal Guarantor'/ 'Respondent'), through *Ms. Anubha Singh, 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 *Shri Shyam Madhav Polybags 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 Singh Chauhan* 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 for the first time in the year 2015 by the Applicant Bank and the same was reviewed for a period of 12 months with enhancement on 03.01.2017. Thereafter, on 20.11.2017 the ad hoc limit was granted.

Sd/-

Sd/-

4. On 21.11.2017, the debt of the Corporate Debtor was secured by the General Form of Unconditional Personal Guarantee jointly or severally to pay the demand of Bank of Baroda by *Mr. Ajay Singh Chauhan*. Thereafter on 22.05.2018, the loan account of the Corporate Debtor was classified as NPA by the Applicant Bank.

5. The proceedings under SARFEASI Act were initiated by the Applicant Bank for enforcing the security interest by issuing a Demand notice under Section 13(2) of the SARFEASI Act on 28.06.2018. As per provisions of the SARFEASI Act when the debt was not paid within 60 days on 24.09.2018 default was committed. The notice for invocation of guarantee was given on 31.01.2023. Thereafter, on 09.06.2023, Form B under the provisions of IBC, 2016 was issued to the Personal Guarantor.

6. In Part III of the Application, the total debt reflected is Rs. 12,95,66,915.60/- (Rupees Twelve Crore Ninety- Five Lakhs Sixty- Six Thousand Nine Hundred Fifteen and Sixty Paisa Only) as on 07.06.2023 plus future interest, and other expenses. The date on which debt became due is 22.05.2018.

7. We have heard the learned counsel for the Applicant and perused the application and documents on record.

8. It is observed that the Personal Guarantor has defaulted in payment of the dues within the statutory period from the service of the demand notice dated 28.06.2018. Consequently, the Applicant has filed this application under Section 95 of the Code read with Rule 7 of the IBC Rules, 2019 against *Mr.*

Sd/- Sd/-

Ajay Singh Chauhan, 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.

9. It is clear that from the date of filing of this application i.e., 30.01.2024, 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.

10. 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 has nominated Ms. Pratibha Khandelwal as Resolution Professional. In view of this, Ms. Pratibha Khandelwal duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-002/IP-N00031/2016-17/10068 (email: cspratibhak@gmail.com), is hereby appointed as the Resolution Professional.

Sd/-

Sd/-

11. 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. Ther 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.

12. 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.

Sd/- Sd/-

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

Sd/-

DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sd/-

RAJEEV MEHROTRA,
TECHNICAL MEMBER

February 09, 2024