IN THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH, NEW DELHI

IA-1411/2022

In

Company Petition (IB) No. 54(ND)/2022

Under Section 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:

YES BANK LIMITED

.... Petitioner/Creditor

Vs.

MAHENDRA KUMAR JAJOO

.... Respondent/Personal Guarantor

In the matter of IA-1411/2022

GAUTAM MITTAL

..... *Resolution Professional*

ORDER DELIVERED ON: 03.08.2022

CORAM:

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant:
For the IRP: Mr. Dhananjaya Sud, Adv.
For Respondent: Adv. Anuj Malhotra and Adv. Naman Saraswat

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ORDER

Per: SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

1. Under consideration is application IA-1411/2022, which is a report filed by the Resolution Professional namely Mr. Gautam Mittal, in accordance with Section 99 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016"). Originally, the Petitioner, namely, Yes Bank Limited (Creditor), had filed a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019 (the Rules, 2019), against Mr. Mahendra Kumar Jajoo (Personal Guarantor), who is the Personal Guarantor to the Corporate Debtor in relation to the credit facility availed by the company M/s. Emkay Automobile Industries Limited (Corporate Debtor) for an amount of Rs. 22,25,62,762.22 as on 12.10.2021.

2. On presentation of the Petition CP (IB) No. 54(ND)/2022, by the Creditor, this Adjudicating Authority vide order dated 11.03.2022, appointed the Resolution Professional viz., Mr. Gautam Mittal, as proposed by the Financial Creditor in the Part IV of Form C, having Registration No. IBBI/IPA-001/IP-P01331/2012-2019/12058, having Email Id: mittalgautam@yahoo.com and 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. The interim moratorium commenced from date of filing the petition. The Report under Section 99 of IBC, 2016 has been filed by him through IA-1411/2022 in CP (IB) -54/ND/2022, recommending the **admission**

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of the application filed under section 95 of IBC, 2016. The grounds for admission of the application recorded in the Report are as follows: -

- Yes Bank Limited, the Petitioner herein, has annexed the documents evidencing the debts owed by the Petitioner to Mr. Mahendra Kumar Jajoo, the Respondent herein.
- The Petitioner has issued a Demand Notice dated 18.11.2021 to the Respondent herein in order to realize the dues of the Petitioner herein qua the Cash Credit facility and various other Term Loans availed by the Corporate Debtor.
- On the perusal of the said petition, the debt has been unpaid to the Yes Bank Limited and the Petitioner has provided the substantive proof annexing the Statement of Accounts which depicts that no payment of debt has been made by the Respondent, after the Demand Notice was issued by the Petitioner.
- The Resolution Professional, vide Email dated 15.03.2022 and Letter dated 15.03.2022 as well as Reminder Email dated 19.03.2022, requested the Respondent, to provide confirmation for repayment of debt, if any, as claimed by the Petitioner. However, till date, the Respondent, has failed to provide his reply on the same.
- As per the main application filed by the Creditor, no assets are mortgaged with the creditor against the Personal Guarantee.
- 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

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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 Personal Guarantor is not an undischarged bankrupt and is not undergoing a fresh start process provided under Chapter II of IBC, 2016.

3. The Respondent/Personal Guarantor in its reply to the report filed by the Resolution Professional under Section 99 of the IBC, 2016 dated 11.04.2022 has submitted that:

i. The RP while preparing its report dated 10.02.2022 has failed to abide by requirements of Section 99 of IBC, 2016.

ii. Personal Guarantee of Respondent obtained by misrepresentation and is hence, invalid in light of Section 142 of the Contact Act, 1872.

- The Applicants has willfully failed to disclose that as per the terms of the Sanction Letter dated 26.10.2018, it was agreed between the Applicant and the Corporate Debtor that the personal guarantee of one of the guarantors, being Mrs. Brinda Jajoo, shall be released post change in the shareholding of the Corporate Debtor with the Respondent having more than 50% share in the Corporate Debtor and to the satisfaction of the Applicant.
- In furtherance of the same, on 03.01.2019, the shareholding of the Respondent and Mrs. Brinda Jajoo in the Corporate Debtor stood altered and the same was communicated to Applicant to their satisfaction.

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- The Corporate Debtor in order to repay the loan availed by it had sent e-mails to the Applicant to grant a No-Objection Certificate so as to enable the Corporate Debtor to sell its non-core mortgaged assets to a prospective buyer and thereby pay the dues of the Applicant bank towards the outstanding loan.

iii. Applicant bank has failed to consider the response of the Personal Guarantor. The Respondent/Personal Guarantor has been denied a reasonable opportunity to dispute the claim of the Applicant qua the Respondent, before initiating the Insolvency Resolution of the Respondent, which is bound to have dire consequences for the Respondent.

iv. The RP has failed to examine the Application filed by the Applicant. The Applicant Bank while preferring the present Application under Section 95 of the IBC, 2016 has allegedly claimed an Outstanding Amount of Rs. 1,24,79,410/- under Funded Interest Term Loan (FITL) facility sanctioned by the Applicant Bank on 09.10.2020, which as per the Applicant Bank extended the Personal Guarantee of the Respondent to the loan availed by the Corporate Debtor. However, the Applicant Bank has failed to place on record the Sanction Letter dated 09.10.2020 based on which the Personal Guarantee of the Respondent stood extended to the FITL facility.

v. The Applicant Bank had declared the account of the Corporate Debtor, of whom the respondent is the Personal Guarantor, as a Non-Performing Asset (NPA) on 29.12.2020 despite there being a moratorium in force imposed by the

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Reserve Bank of India against declaring the account of borrowers, especially those of Micro, Medium and Small Enterprises, as NPA. In this regard, the Hon'ble Supreme Court vide its order dated 03.09.2020 and 10.09.2020 passed in "Gajendra Sharma v. Union of India and Anr" had extended the moratorium on declaring the bank accounts of the borrowers as NPA, which subsequently came to an end on 23.03.2021 vide judgment dated 23.03.2021 passed by the Hon'ble Supreme Court in "Small Scale Industries Manufactures Association (Regd.) v. Union of India and Others".

vi. By virtue of Section 240A of the IBC, 2016, the Respondent is entitled to propose a Resolution Plan for the insolvency resolution of the Corporate Debtor, an MSME and the present Application filed by the Applicant Bank is another attempt to prevent the resolution of the Corporate Debtor.

4. The Resolution Professional in his rejoinder dated 04.05.2022 has submitted that:

- As per the requirements set out under Section 99(4) of the Code, the RP vide email dated 15.03.2022 and Letter dated 15.03.2022, requested the Respondent, to provide information on the Application filed by the Petitioner, with respect to the debt as claimed by the Petitioner being unpaid, after the service of the Demand Notice by the Petitioner upon the Respondent.
- Till the date of filing of the present Report by the RP under Section 99 of the Code, the Respondent failed to apprise the

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RP about any such document and did not reply to the email/letter of the RP.

5. We have gone through the documents placed on record and the averments made and heard the Learned Counsels. The averment regarding the Sanction Letter dated 26.10.2018 was made against Mrs. Brinda Jajoo who is not the personal guarantor in the present case. Hence, it has no bearing in the present case. Also, from the records of the Petition, it is observed that the unconditional and irrevocable Deeds of Guarantee dated 05.11.2018 was executed by Respondent/Personal Guarantor and the guarantees created for CC Facility & TL Facility stand extended as guarantees for repayment of FITL Facility together with interest, costs and charges and all other monies due and payable by the Borrower to Yes Bank Ltd. It is further observed that Yes Bank Ltd. has repeatedly sent reminders, vide letters (annexed in the Petition), on account of irregular and delayed payments and despite the same, the Corporate Debtor and the Respondent has failed to make regular payments and committed default in payment of its dues towards the Applicant Bank.

6. Based on the above and the reasons recorded in the report submitted by the Resolution Professional, the Petition i.e., IB - 54(ND)/2022, 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

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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.

7. The Resolution Professional viz., Mr. Gautam Mittal, who has been appointed under Section 95 vide Order dated 11.03.2022, 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

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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.

8. 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.

9. 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.

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10. 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.

11. In terms of the above, CP (IB)-54(ND)/2022, filed under Section 95 (1) of the IBC, 2016 is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor i.e., Mr. Mahendra Kumar Jajoo.

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RAHUL BHATNAGAR
(Member Technical)

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P.S.N PRASAD
(Member Judicial)