

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

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

**SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

Company Petition No. (IB)- 40/94(1)/JPR/2022

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:

**Shri Subhash Chander Mishra
S/o Shri Brij Lal Mishra
House No. C-344, Talwandi,
Near D.A.V. School, Kota- 324005**

...Applicant/ Personal Guarantor

For the Applicant : Nitesh Shrivastava, Adv.

For the Bank : Alok Garg, Adv.
Sauravh Vhandari, Adv.

Order Pronounced On: 24.06.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Petition, numbered as CP No. (IB)- 40/94(1)/JPR/2022, is filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 ('The 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 Shri Subhash Chander Mishra. The prayer made is to initiate the insolvency resolution process in respect of Shri Subhash Chander Mishra, being the Personal Guarantor for M/s Niroz Insulations Pvt. Ltd. and M/s Triveni Agrotaders Pvt. Ltd. ('Corporate Debtor').

2. The Applicant has submitted that a loan was advanced to the Corporate Debtor by State Bank of India, S.M.E. Branch, Dadabari Extension, Opposite Modi College, Kota ('Financial Creditor'). Thereafter, pursuant to the default of the Corporate Debtor, the Financial Creditor published a demand notice in newspaper under Section 13(2) of the SARFAESI Act, 2002 as on 24.05.2021.
3. It is pertinent to note that an application under Section 10 of IBC, 2016 has been filed by the Corporate Debtor itself seeking initiation of Corporate Insolvency Resolution Process, the same is pending adjudication before this Adjudicating Authority.
4. It is clear that the applicant has failed in fulfilling his obligations pursuant to the personal guarantee given to the corporate debtor within 60 days from the date of the said notice under section 13(2) of SARFAESI as a result of which the applicant is a debtor in default and is accordingly eligible to file the instant application under the provisions of section 94(1) of the Insolvency and Bankruptcy Code, 2016, read in consonance with the

applicable rules under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.

5. It is seen that the Applicant in Part III of the application has mentioned the total amount of default to be Rs. 5,35,53,097/- (Rupees Five Crore Three Five Lac Fifty-Three Thousand and Ninety-Seven only) which are as follows:

Sr. No.	Name of Creditor	Debt in Default (In INR)	Date of Default
1.	Tata Motors Finance Ltd.	12,88,384/-	15.12.2018
2.	ICICI Bank Ltd.	1,09,39,470/-	25.11.2020
3.	Kotak Mahindra Bank	10,36,420/-	15.07.2020
4.	Bajaj Finance Ltd.	4,20,000/-	29.03.2020
5.	HDB Financial Services Ltd.	18,56,279/-	15.01.2020, 23.10.2018
6.	State Bank of India	1,64,54,355/-	01.09.2020
7.	IDFC First Bank Ltd.	8,59,290/-	23.07.2019
8.	Bank of Baroda	18,18,555/-	Not Known
9.	India Bulls Ltd.	38,43,230/-	25.10.2021
	(a)		
	(b)	1,36,91,990/-	27.05.2021
	(c)	13,45,124/-	-
	Total Debt of Default	5,35,53,097/-	

6. The Application has been filed in respect of debts which are not excluded debts as enumerated under Section 79(15)(e) of the Code. It is noted that

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 is not barred in terms of Section 94(4) of the Code. The Application under consideration is in a Form-A format and accompanied with the required fees as prescribed and contains the required details. Thus, prima facie the requirements of Section 94 of the Code are fulfilled.

7. 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 27.04.2022 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.
8. 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 in form of postal slips. The Authority had further directed to ensure service upon all Financial Creditors and file affidavit of service along with a tracking report vide Order dated 13.05.2022. In compliance of the same, the Applicant has preferred Additional documents vide Diary No. 1680/2022 dated 31.05.2022.

9. The Applicant has proposed the name of Resolution Professional; therefore, this Authority is hereby appointing Mr. Prashant Sharma bearing Registration No. IBBI/IPA-001/IP-P-00290/2017-2018/10534 with the e-mail address prashantfcaipur@yahoo.com and phone number +91 9414055801 as the RP in the present matter.
10. In this matter, the Resolution Professional appointed herein, Mr. Prashant Sharma, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. He is directed to recheck availability of all information as per the relevant Rules & Forms. He 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.

11. 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 Application and documents on the Resolution Professional by all modes for information.
12. The Registry is directed to immediately send a soft copy of the instant Application along with this order to the IRP nominated herein on his e-mail id.
13. In the circumstances, CP No. (IB)- 40/94(1)/JPR/2022 is allowed.

DEEP
CHANDRA
JOSHI

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DEEP CHANDRA JOSHI
Date: 2022.06.24
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(Deep Chandra Joshi)
Judicial Member

RAGHU
NAYYAR

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(Raghu Nayyar)
Technical Member