IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA(IBC) No. 277/JPR/2022
In CP No. (IB)- 01/94/JPR/2022

MRS. ANURADHA CHOUDHARI

...Applicant

IN THE MATTER OF:
IA NO. 277/JPR/2022

MEMO OF PARTIES

MRS. ANURADHA CHOUDHARI
Through Resolution Professional
Mr. Vishnu Upadhyay
Reg. No. IBBI/IPA-003/IP-N00153/2018-19/11843,
Office Address at DWA/G-104, Dwarka
Apartment, Mansarover,
Jaipur, Rajasthan-302020.
E-mail-ipvishnu.upadhyay@gmail.com

...Applicant

For the Applicant : Amol Vyas, Adv.

For the Respondent : Anubha Singh, Adv.

Order Pronounced On: - 28.03.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The Applicant namely, *Mrs. Anuradha Choudhari* ('Personal Guarantor'/ 'Debtor') had filed an Application bearing *CP No. (IB)-01/94/JPR/2022,* under Section 94(1) of the Insolvency and Bankruptcy Code 2016 (the 'IBC' / 'Code') r/w Rule 6 of the Insolvency 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 Emgee Cables & Communication Private Limited* for an amount of Rs. 46,85,91,393/- (Rupees Forty-Six Crores Eighty-Five Lacs Ninety-One Thousand Three Hundred and Ninety-Three Only).

2. On presentation of the Application by the Applicant, this Authority *vide* Order dated 24.05.2022 had appointed *Mr. Vishnu Upadhyay*, bearing Registration No. IBBI/IPA-003/IP-N000153/2018-2019/11843 and the Resolution Professional was directed to file a report under Section 99 of IBC, 2016 which has been filed by him through *IA(IBC)No.277/JPR/2022.*

3. The Present Application bearing *IA(IBC)No.277/JPR/2022* 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 Personal Guarantor under Section 94 of the Code seeking commencement of Insolvency Resolution Process against the Debtor/Personal Guarantor, namely, *Mrs. Anuradha Choudhari.* The Resolution professional herein recommends acceptance of the said Application in accordance with Section 99(7) of IBC and the reasons for such recommendation as per Section 99(9) of IBC, 2016 are set forth as below:

3.1 That the Applicant/Personal Guarantor *Mrs. Anuradha Choudhari,* (Personal Guarantor) in *CP-(IB)-01/94(1)/JPR/2022* herein falls within the parameters of Section 94(1) of the Code of 2016 as Applicant/Personal Guarantor has committed default in repayment of her liabilities in terms of debt arising on account of invocation of personal guarantee given by Applicant/Personal Guarantor towards Corporate Debtor *M/s Emgee Cables & Communication Private Limited* and the liabilities remained unpaid and accordingly, the

requirement set out in Rule 3(e) of Personal Guarantor Rules, 2019 is satisfied.

3.2 That the Debtor has committed a default in payment of its liabilities and therefore, the requirement set out in section 94(1) of IBC is satisfied and the Application has been filed in compliance with the provisions of Section 94(3) of the Code of 2016 as the said Application has been submitted only in respect of debts which are not excluded debts as enumerated under Section 79(15) of the Code.

3.3 That the Applicant/ Personal Guarantor does not fall under the prohibiting criteria mentioned under the provisions of Section 94(4) of the Code of 2016 and is entitled to file the said application under Section 94 of the Code of 2016 as the Applicant is:

3.3.1 Not an undischarged bankrupt;

3.3.2 Not undergoing a fresh start process;

3.3.3 Not undergoing an insolvency resolution process; or

3.3.4 Not undergoing a bankruptcy process.

3.4 That the Applicant/Personal Guarantor is entitled to file the said Application pursuant to the criterion envisaged under Section 94(5) of the Code of 2016 as no application under Chapter III of the Code of

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2016 has been admitted in respect of the Applicant/Personal Guarantor during the period of twelve months preceding the date of submission of the said Application under Section 94 of the Code, 2016.

3.5 That the said Application has been filed by the Applicant/Personal Guarantor in compliance with Section 94(6) of the Code of 2016 in 'Form A' along with an application fee of Rs. 2,000/- (Rupees Two Thousand Only) as prescribed in Rules of 2019 and in the manner as prescribed under Rule 6(1) of Rules of 2019.

3.6 That the Application filed u/s 94(1) of the Code is accompanied with details, the Applicant/Debtor has committed default in repayment of the liabilities in terms of debt arising on account of the invocation of personal guarantee given by the Applicant to the Corporate Debtor.

3.7 That the Applicant/Personal Guarantor is not eligible under Section 80 for the fresh start process provided under Chapter II of the Code of 2016.

4. The compliance with the relevant sections of the Code is as follows:

Sr. No.	***Requirements under Relevant provisions of Section 99 of the Code***	***Compliance by RP***

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	Not Applicable

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	registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.	
iv.	Section 99(4): For the purposes of examining an application, the resolution professional may seek such further information or explanation 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.	YES The Resolution Professional sought certain clarification/information from all the Financial Creditors through an E-mail dated 03.06.2022.
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 from the Applicant/Personal Guarantor through the counsel to the queries raised by the Resolution Professional through E-mail dated 14.06.2022.
vi.	Section 99(6): The resolution professional shall examine the application and ascertain that -	YES RP submitted that the present application satisfies the requirements of provisions of Section 94 as has been

	(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).	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	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.

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	under Section 81 by the Adjudicating Authority.	
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 16.06.2022

5. It is noted from the report that a loan has been taken from Dena Bank for an amount of Rs. 46,28,00,000/- (Rupees Forty-Six Crore Twenty-Eight Lakh Only) which is secured by first charge by way of hypothecation over stocks, book-debts, movables and other assets of the Company and first charge by way of equitable mortgage over immovable properties of the Company Personal Guarantee of *Mr. Shripal H Choudhari, Mr. Abhinav Choudhari, Mrs. Anuradha Choudhari* and Corporate Guarantee of *M/s H.M.S. Investment Pvt. Ltd.* The said financial assistance from Dena Bank

includes (1). Cash Credit Hyp (CCH) Limit enhanced from 13.20 Crore to Rs. 20 Crore, PCH cum FBP/FBD DP/DA 90 days (sub-Limit of CCH) is Rs. 02.00 Crore (2). Existing Term Loans (II, m & IV): No Modification Term Loans II, III & IV are squared up. Fresh Term Loan is Rs. 1.28 Cr. (3). Letter of Credit (Inland/Foreign) DP/DA 90 days Limit enhanced from Rs. 10 Crore to Rs. 20 Crore (4). The Bank Guarantee Limit was reduced from Rs. 10 Crore to Rs. 5 Crore (5) BP/PD under LC: NIL (6). Forward Cover Exposer: NIL.

6. The loan from Small Industries Development of India is a business loan of Rs. 5 Crore secured by movable assets and all other assets (Including current assets, intangible assets, books debts, and receivables) of the Company. The loan from Edelweiss Retail Finance Ltd. is a business loan of Rs. 1,67,00,000/- (Rupees One Crore Sixty-Seven Lakh Only) secured by charge on plant and machinery of the Company.

7. The report submitted by the Resolution Professional, the application i.e., *IA(IBC)No.277/JPR/2022* filed under the provisions of Section 99 of IBC is taken on record, and the CP(IB)-01/94/JPR/2022 is hereby admitted under Section 100 of the IBC.

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8. Resultantly, an Insolvency Resolution Process is initiated against the Personal Guarantor, and a 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;

   8.1 Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and

   8.2 The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

   8.3 The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

   8.4 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.

9. The Resolution Professional *viz.*, *Mr. Vishnu Upadhyay,* who has been appointed under Section 97 *vide* order dated 24.05.2022, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of the 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 two newspapers, one in English and other in Vernacular language having wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two copies of the notice to the Registry. A copy of the notice shall be placed by the Registry on their website and shall also be affixed in the premises.

10. 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.

11. 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 the meeting should not be less than 14

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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 Section 107 of the Code. In case the resolution professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof.

12. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111 of the Code. The Resolution Professional shall prepare a report of the meeting of the creditors on the repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of the same shall also 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.

13. The Personal Guarantor is directed to deposit Rs. 1,00,000/- (Rupees One Lakh Only) to the bank account of the Resolution Professional within one week towards its fees and expenses. This shall be subject to the rules and

regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

14. In terms of the above, *CP No. (IB)-01/94/JPR/2022* 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. Anuradha Choudhari*. Accordingly, *IA No. 277/JPR/2022* stands disposed off.

DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

RAJEEV MEHROTRA,
TECHNICAL MEMBER