

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No.302 - C.P.(IB)/63(AHM)2023
With
Item No. 303 – IA/273(AHM)2024

Order under Section 94 IBC

IN THE MATTER OF:

Bharat Bhushan Jain

.....Applicant

Order delivered on 24/04/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I
AHMEDABAD**

**IA/273(AHM)2024
With
CP/IB/63/AHM/2023**

*Filed under Section 94 of the Insolvency & Bankruptcy Code,
2016*

*In the matter of **Mr. Bharat Bhushan Jain,***

Mr. Bharat Bhushan Jain,
Personal Guarantor to Sysco Industries Ltd.
206-207, Rajhans Complex,
Ring Road, Surat – 395 002

... Applicant/Personal Guarantor

Order pronounced on 24.04.2024

CORAM:

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For the Applicant	:Mr. M. N. Marfatia, Adv. a.w. Mr. Malav Jitendra Ajmera IRP present in person
For Erstwhile RP of CD	:Mr. Pratik Thakkar, Advocate
For the Financial Creditor	:Mr. Hitesh Buch, PCS for Nutan Nagarik Sahakari Bank Limited :Mr. Rituraj Meena, Advocate for SBI

O R D E R
Per: Bench

1. The Present Application is filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019. The prayer made is to initiate the Insolvency Resolution Process (hereinafter referred as "IR Process") against the Applicant/Guarantor who is the Personal Guarantor of M/s. Sysco Industries Limited.

2. **The facts of the Case are as follows: -**
 - i. The Applicant Personal Guarantor had given a personal guarantee in respect of credit facilities obtained by Sysco Industries Limited (Corporate Debtor). The Corporate Debtor is presently under liquidation in CP (IB) 62/7/NCLT/AHM/2021. Total debt as per Part-III of the application is Rs. 4,84,37,491/-.

3. On presentation of the application by the Applicant/Guarantor, this Authority vide order dated 13.12.2023 has appointed the Resolution Professional viz., **Mr. Malav Jitendra Ajmera**, having Registration No. **IBBI/IPA-001/IP-P01190/2018-19/11908** & directed IRP to file a report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by IRP through **IA/273(AHM)2024** on 02.02.2024 under Diary No. E379 recommending the admission of the application filed under Section 94 of IBC, 2016. The grounds for admission of the application recorded in the Report are as follows: -

- i. *It is stated that IRP has examined the Application CP(IB)/63(AHM)2023 and the same is found to be satisfying all ingredients of Section 94 of Insolvency & Bankruptcy Code, 2016.*
- ii. *It is stated that compliance in terms of Section 94 of the code read with Section 99(6)(a) and (b) of the Code is under:*

Section detail	Particulars	Details/Compliance
	<i>The resolution professional shall</i>	<i>I recommend acceptance of the application.</i>

99(1)	<p>examine the application referred to in Section 94 within ten days of his appointment and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.</p>	
99(4)	<p>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.</p>	<p>Requisite E-mail communication to the following seeking information:</p> <ul style="list-style-type: none"> a) Bharat Bhushan Jain (Applicant/Personal Guarantor) along with their Advocates b) State Bank of India (Financial Creditor of Sysco Industries Limited) c) Sunil Kumar Agarwal(Resolution Professional of Sysco Industries Limited) d) Nutan Nagrik Sahakari Bank Limited e) Deutsche Bank f) Siemens Financial Services Private Limited g) Ashv Finance Limited (Earlier Known as Jain Sons Finlease Limited)
99(5)	<p>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.</p>	<p>I have received responses from Siddharth Jain Son of Mr. Bharat Bhushan Jain(Applicant/Personal Guarantor), State Bank of India (Financial Creditor of Sysco Industries Limited), Sunil Kumar Agarwal</p>

		<i>(Resolution Professional of Sysco Industries Limited) and Ashv Finance Limited. No response was received from the other parties mentioned in 99(4).</i>
99(6)(a)	<i>The resolution professional shall examine the application and ascertain that – (a) The application satisfies the requirements set out in Section 94</i>	Yes
99(6)(b)	<i>The applicant has provided information and given explanation sought by the resolution professional under sub-section (4)</i>	<i>Yes, I received information from the applicant's son on January 23, 2024 against our e-mails on various dated for seeking further information from him.</i>
99(7)	<i>After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.</i>	<i>Based on the information I recommend accepting the application and the grounds are mentioned in the report.</i>
99(9)	<i>The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).</i>	Yes
99(10)	<i>The resolution professional shall give a copy of the report under sub-section (7) to the</i>	<i>Yes, will communicate the report to Mr. Bharat Bhusan Jain (Applicant) in due course.</i>

	<i>debtor or the creditor, as the case may be.</i>	
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- iii. *It is stated that the debt owed by M/s. Sysco Industries Limited to the State Bank of India of Rs. 90,93,73,389.11 along with interest rate till 28.02.2021 (Debt amount as per application filed by State Bank of India under Section 7 of the IBC, 2016 against Corporate Debtor M/s. Sysco Industries Limited) as evidenced by the documents submitted along with the application.*
- iv. *It is stated that Mr. Bharat Bhushan Jain had extended Personal Guarantee as evidenced by the Deed of Guarantee agreement was executed on dated March 21, 2011 and October 21, 2016 with State Bank of India.*
- v. *It is stated that Mr. Bharat Bhushan Jain given his property as collateral security for availing the renewal of various credit facility from the State Bank of India vide their letter dated March 27,*

2014 issued in favor of M/s. Sysco India Private Limited.

- vi. It is stated that the State Bank of India on November 12, 2018 sent notice to the Borrower and Guarantors u/s 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and directed to pay the debt. However, the Personal Guarantor failed to pay the debt.*
- vii. It is stated as per Arbitral Tribunal order dated October 28, 2020, Debt owed by M/s. Sysco India Private Limited (Borrower) to the Nutan Nagrik Sahakari Bank Ltd. of Rs. 2,01,53,156.87/- plus interest as mentioned in order as evidenced by the documents submitted along with the application. Moreover, as per e-mail response received from the Nutan Nagrik Sahakari Bank Ltd. dated January 24, 2023 they mentioned the outstanding receivables of Rs.2,18,31,849.23 from the*

Borrower and Guarantors. However, we have not received breakup of these outstanding amount.

- viii. It is stated that Mr. Bharat Bhushan Jain had extended Personal Guarantee as evidenced by the sanction letter was issued on dated January 28, 2016 with Nutan Nagrik Sahakari Bank Ltd.*
- ix. It is stated that as per Section 96 (1) (a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application. In view of the same, the interim moratorium under section 96 of the code is effective from 12.10.2022.*
- x. It is stated that The Hon'ble National Company Law Tribunal, Ahmedabad Bench vide order dated 13.12.2023 directed for the RP Report as per Section 99 of the code on admission or rejection of the application made by the Mr. Bharat Bhushan Jain under Section 94 of the code.*

- xi. It is stated that E-mail has been sent on January 06, 2024 and four follow-up E-mail on various dates to Mr. Bharat Bhushan Jain (applicant/personal guarantor) and Advocates (Representative of Mr. Bharat Bhushan Jain) along with the order of Hon'ble Adjudicating Authority dated December 13, 2023. We received a response from him on January 23, 2024.*
- xii. It is stated that E-mail has been sent on January 16, 2024 and a follow-up E-mail Dated January 18, 2024 to Mr. Sunil Kumar Agarwal (Resolution Professional of M/s Sysco Industries Limited) along with the order of Hon'ble Adjudicating Authority dated December 13, 2023, to provide us any records and evidence concerning personal guarantee provided by Mr. Bharat Bhushan Jain to State Bank of India on behalf of M/s Sysco Industries Limited. In response to that he stated the followings:-*

a) *Resolution Plan of M/s Sysco Industries Limited was approved on July 01, 2022 by the Hon. NCLT, Ahmedabad.*

b) *He also stated that an order dated November 09, 2023 under section 43 of IBC was passed by the Hon. NCLT, Ahmedabad. In that, they directed Mr. Bharat Bhushan Jain along with two other respondents to deposit a sum of Rs. 7.78 crores within a period of 15 days from the date of order i.e. November 09, 2023.*

xiii. *It is stated that E-mail has been sent on January 08, 2024 and four follow-up E-mail on various dates to the State Bank of India (Financial Creditor of M/s Sysco Industries Limited) along with the order of Hon'ble Adjudicating Authority dated December 13, 2023, to provide us any records and evidence concerning personal guarantee provided by Mr. Bharat Bhushan Jain to State Bank of India on behalf of M/s Sysco Industries Limited. In response to that they shared the followings:-*

- A) *Sale certificate dated July 27, 2023 of the Plot no. 23, admeasuring 501.66 sq. mtrs. Equivalent to 600 Sq. Yards at Vasundhara Co-operative Housing Society Ltd., situated on the land bearing survey no.30, New Revenue Survey No.23, Part No. 1, T.P. Scheme No.1 (Vesu). F.P. No. 60 & 61 of Village Vesu, Taluka- Choryasi, District - Surat.*
- B) *No dues letter in relation to Sysco Industries Limited issued on Dated May 29, 2023.*
- C) *They also shared the order dated November 09, 2023 under section 43 of IBC was passed by the Hon. NCLT, Ahmedabad. In that, they directed Mr. Bharat Bhushan Jain along with two other respondents to deposit a sum of Rs. 7.78 crores within a period of 15 days from the date of order i.e. November 09, 2023.*
- D) *Assets and Liabilities details of Mr. Bharat Bhushan Jain as on March 31, 2015*

xiv. *It is stated that the E-mail has been sent on January 19, 2024 to the Nutan Nagrik Sahakari Bank Limited (Financial Creditor of M/s Sysco India Private Limited) along with the order of Hon'ble Adjudicating Authority dated December 13, 2023, to provide us any records and evidence concerning personal guarantee provided by Mr. Bharat Bhushan Jain to Nutan Nagrik Sahakari Bank Limited on behalf of M/s Sysco India Private Limited. In response to that they shared the followings:-*

- A) *Bank Sanction letter dated January 28, 2016 along with personal guarantee given by Mr. Bharat Bhushan Jain.*
- B) *Application for Execution under order XXI rule 11(2) of the Civil Procedure Code before the Hon'ble Principal District Judge at Surat by petition no. 417 of 2022 dated 12th April, 2022.*
- C) *Outstanding of debt receivables from borrower and personal guarantor.*

4. It is further stated that the Applicant filed a Declaration on 12.12.2023 vide Inward Diary No. D5038 to place on record the collateral of the property given to SBI dated 27.03.2014, copy of Auction Notice dated 07.12.2021 of SBI regarding auctioning of property, copy of initiation of CIRP by order of the Hon'ble NCLT at Ahmedabad in CP (IB)No.62/7/NCLT/AHM/2021, Memo of OA No. 721 of 2019 filed by the Deutsche Bank, Arbitral Award dated 28.10.2020 against the Nutan Nagrik Sahakari Bank Limited, Statement of Assets and Liabilities for the previous (3) years, Income Tax Return for F.Y. 2019-2020 & 2020-2021, Guarantee Deeds executed by the applicant in favour of State Bank of India and copy of Guarantee given in relation to any of the debts of the Corporate Debtor.

5. It is stated that Reply was filed by one of the Financial Creditor i.e. **State Bank of India** on 08.04.2024 under Inward Diary No. D3009 in which it is stated as under:
 - a) It is stated that the principal borrower i.e. Sysco Industries Limited, initially availed the loan facility

from State Bank of India of Rs.25.50 Cr. (Twenty Five Crore Fifty Lakhs) vide sanctioned letter dated 16.03.2011 and, thereafter, through various renewal agreements and other loan agreements, the amount of the loan facility was enhanced from time to time.

- b) It is stated that vide agreements dated 21.03.2011, 24.01.2014, 25.06.2014, 07.01.2016, 01.07.2016 and 21.10.2016, Mr. Bharat Bhushan Jain, executed personal guarantee agreements with the State Bank of India to secure the financial facilities granted by the bank to the principal borrower. The copy of guarantee agreement is annexed with the reply.
- c) It is stated that the principal borrower failed to pay the dues of the bank, and hence the account of the principal borrower became default, and subsequently as per procedure, the State Bank of India declared the account of the principal borrower as a Non-Performing Asset on 30.06.2017.

d) It is stated that the State Bank of India issued notice to the principal borrower and personal guarantor under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 & Rules on 12.11.2018, to recover an amount in default of Rs. 69,68,24,895.41/- as on 11.11.2018. As the principal borrower and personal guarantor were unable to pay the outstanding amount, the State Bank of India initiated recovery proceedings by preferring an application under Section 17 of the act bearing Original Application No. 1537/2018 before DRT-II Ahmedabad. The same is annexed with the reply.

e) It is stated that the State Bank of India preferred an application under section 7 of the Insolvency and Bankruptcy Code, 2016, bearing CP (IB) (AHM) no. 62/2021, wherein the this Adjudicating Authority, vide order dated 08.09.2021, was pleased to pass an admission order and initiate CIRP proceeding against principal borrower and

further pleased to appoint Interim Resolution Professional in the matter. The same is annexed with the reply.

- f) Thereafter, the State Bank of India filed its claim of Rs.97,26,78,502.74/- before the Interim Resolution Professional on 16.09.2021. The copy of the Form-C is annexed with the reply.
- g) On 01.09.2021, a Demand Notice was issued under section 95(4)(b) of the IB Code 2016, read with rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Persons) Rules, 2019, on the present applicant, Mr. Bharat Bhushan Jain, demanding the payment of the unpaid debt in default amounting to Rs.96,85,87,768.36/- as on 01.09.2021, which was successfully served to the personal guarantor. The copy of demand notice is annexed with the reply.
- h) It is stated that the principal borrower has proven unable to fulfil its financial obligations to the State

Bank of India, it is imperative to acknowledge that, according to the terms outlined in the executed guarantee agreement by the personal guarantor, the responsibility for settling the outstanding amount shifts to the personal guarantors. It is submitted that this contractual provision necessitates that Mr. Bharat Bhushan Jain, being one of the personal guarantors, is also held liable for the outstanding dues owed to the State Bank of India. The guarantee agreement serves as a binding contract, legally obligating the guarantor to ensure the repayment of the loan in the event of default by the borrower. Therefore, given the default situation of the principal borrower, Mr. Bharat Bhushan Jain is legally obligated to discharge the financial liabilities owed to the State Bank of India as per the terms stipulated in the guarantee agreement.

6. Further, Reply was filed by one of the Financial Creditor i.e. **Nutan Nagarik Sahkari Bank Limited** on

08.04.2024 under Inward Diary No. D2953 summary of the same is stated as under:

a) FACTS RELEVANT TO FINANCIAL ASSISTANCE PROVIDED BY NUTAN NAGARIK BANK LIMITED TO SYSCO INDIA PRIVATE LIMITED:-

Sysco India Private Limited took a cash credit loan from the bank and defaulted on the payment. The bank classified the account as NPA and initiated arbitration proceedings against the company, directors and guarantors. The bank also issued notices under SARFAESI Act and auctioned the company's factory land. The bank has not yet invoked the personal guarantee but claims that the guarantors owe Rs.2,18,31,849.23 to the bank. The guarantors have also been declared as Wilful Defaulter by SBI for non-repayment of dues by another company, Sysco Industries Limited.

b) NON DISCLOSURE OF DEBTS AND PROVIDING FALSE INFORMATION IN FORM A:-

1. It is stated that the Personal Guarantor has given the details of guarantee given to Sysco Industries Limited in Form A-Part-1-clause 14 [at page 3 of the CP(IB)], however, he has not disclosed that he is personal guarantor in respect of debt payable by Sysco India Private Limited to the Bank. Further, in the said clause 14, the personal guarantor has falsely stated that Corporate

Debtor (Sysco Industries Limited) is under Liquidation in CP (IB) No. 62/7/NCLT/AHM/2021. In fact, the Resolution Plan in respect of Corporate Debtor has been approved by this Hon'ble Tribunal vide Order dated 01.07.2022. The said Order is annexed by the IRP in his Report under section 99 of IBC at Page No. 63 to 70.

2. It is stated that while the Personal Guarantor has not disclosed about his Guarantee provided to the Bank in respect of dues payable by Sysco India Private Limited, he has submitted the copy of Arbitral Award dated 28.10.2020 (at page 4 of the CP (IB)] passed in favour of the Bank in the matter of Sysco India Private Limited, to purportedly suggest that the guarantee is invoked against him. It is stated that the said Order is not in respect of Sysco Industries Limited for which the Form A is submitted. It is reiterated that the Personal Guarantor has not disclosed in Form A about his guarantee provided to the Bank in respect of dues payable by Sysco India Private Limited.
3. It is stated that the Personal Guarantor has not disclosed about his debt payable (albeit jointly and severally with other guarantors) to the Bank

in respect of dues payable by Sysco India Private Limited in Form A-Part-III- clause 4 (at page 6 of the CP(IB)]. It is observed that the said Part-III of Form A is not filled up for Particulars of Debts (creditor wise) while there are several creditors enumerated in clause 4.

4. It is stated that the Report of the IRP annexed to the IA, it appears that vide Order dated 09.11.2023 passed in IA 109 of 2022 in CP (IB) 62 of 2021, this Hon'ble Tribunal had directed Personal Guarantor and his relatives to deposit Rs.7.78 crores with Corporate Debtor viz. Sysco Industries Limited being the transaction under section 43 of IBC. It is not known whether the said amount is deposited by the Personal Guarantor with the corporate debtor as directed. It is stated that such a transaction raise suspicion about the probity of the Personal Guarantor.

c) **THE APPLICATION OF PERSONAL GUARANTOR IS REQUIRED TO BE REJECTED FOR FOLLOWING REASONS:**

1. It is stated that the Personal Guarantor has not come with clean hands having siphoned off the funds from corporate debtors by entering into transactions with related parties as is evident from the Order of this Hon'ble Tribunal referred to in paragraph 14 above.

2. It is stated that the Personal Guarantor has defrauded the banks in respect of credit facilities/finance availed by corporate Sysco India Private Limited where he and his immediate relatives are personal guarantors. The amount realized from sale of hypothecated stocks has not been deposited in the account.
3. It is stated that the Personal Guarantor has been declared as a Wilful Defaulter by SBI and cannot seek any relief for his defaults.
4. It is stated that the Bank has already reported to RBI under Fraud Reporting System as stated hereinbefore.
5. It is stated that the IRP has pointed out various inaccuracies in the Application. The non-disclosure of material information relating to debt cannot be considered as mere technical inaccuracy when the intention is not bona-fide.
6. It is stated that the application of Personal Guarantor is an attempt to negate the action under SARFAESI as well as the Arbitral Award against Sysco India Private Limited and to stall

the Execution Petition filed by the bank and which is pending before the Court at Surat.

7. On hearing dated 10.04.2024 the Ld. Counsel for the personal guarantor stated that there is no need to file reply. Further, Personal Guarantor has no objection, if the petition is admitted. However, the Financial Creditor i.e. Nutan Nagrik Sahakari Bank Limited has objected to the admission of the personal guarantor as the same is required to be rejected in terms of para 15 to 21 of its reply. Further, learned counsel appearing for the RP submits that there is no need to file rejoinder against the reply filed by SBI as well as Nutan Nagrik Sahakari Bank Limited.
8. We have heard the learned Counsels for the parties and perused the documents on record. We have also gone through the IRP report filed under Section 99 of the IB Code, 2016 through IA/273(AHM)2024 on 02.02.2024.
9. It is noted under section 128 of Indian Contract Act, 1872 that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to

Creditor and Creditor has the right to recover its dues from either of them or both of them simultaneously. For benevolent reference, the said section of Indian Contract Act, 1872 is reproduced below:

“The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”

10. The proceedings in the matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personnel Guarantor was pending before the Hon'ble Supreme Court in the matter of **Dilip B. Jiwrajka V/s Union of India & Ors.** in WP(civil)No. 1281 of 2021.
11. The Hon'ble Supreme Court in the judgement of **Dilip B. Jiwrajka V/s Union of India & Ors.** in **WP(civil)No. 1281 of 2021** dated **09.11.2023** upheld the Constitutional Validity of the Sections 94 to 100.
12. From the report of IRP, it is clear to us that IRP has recommended to accept the application filed by the personal guarantor i.e., Bharat Bhushan Jain under

Section 94 of IBC, 2016 to initiate Insolvency Resolution Process subject to the technical inaccuracy identified in application being reported as under:

- i. Mr. Bharat Bhushan Jain had extended Personal Guarantee as evidenced by the sanction letter was issued on dated 28.01.2016 with Nutan Nagrik Sahakari Bank Ltd.
- ii. Demand Notice dated 09.07.2019 issued by Recovery Officer, DRT-II Ahmedabad in RC No.216/2016, is invocation of Guarantee against the Applicant/Personal Guarantor.
- iii. The Arbitral Tribunal order dated 28.10.2020 is given against M/s. Sysco India Private Limited (Borrower) as well as the Applicant being Gurantor in favour of Nutan Nagrik Sahakari Bank Ltd. for Rs. 2,01,53,156.87/- plus interest as mentioned in order as evidenced is invocation of personal guarantee and the filing of the application is under the period of limitation.

- iv. It is stated in the report that the Applicant is eligible under Section 94(4) of the IBC, 2016.
 - v. It is stated in the said report that all the documents required under Rule 6 along with the Form-A of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor.
13. In view of the foregoing we are left with no other choice but to order as under: -
- I. Initiate Insolvency Resolution Process against the Applicant/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period;
 - a) Any pending legal action of 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.

II. The Resolution Professional viz. **Mr. Malav Jitendra Ajmera**, having Registration No. **IBBI/IPA-001/IP-P01190/2018-19/11908** who was appointed when the Section 97 application was allowed vide Order dated 13.12.2023, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Ahmedabad Bench, inviting claims from all Creditors, within 21 days of such Issue. The notice under Sub Section (1) of Section 102(2) shall include: -

- a) details of the order admitting the application;
- b) particulars of the resolution professional with whom the claims are to be registered; and
- c) the last date for submission of claims.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular

which have wide circulation in the State where the Corporate Debtor and Personal Guarantor situated/resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

- IV. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of:
- a. the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and
 - b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.
- V. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs. The repayment plan may authorize or require the Resolution Professional to: -
- a) carry on the debtor's business or trade on his behalf or in his name or
 - b) realise the assets of the debtor, or
 - c) administer or dispose of any funds of the debtor.
- VI. The repayment plan shall include the following, namely:-

- a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
- b) provision for payment of fee to the Resolution Professional.

VII. 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.

VIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 day or more than 28 days from the date of submission of the Report under sub- section (1) of Section 106 of 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 provides under the provisions of Section 107 of 1BC, 2016.

IX. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of

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 IBC, 2016 and submit the same to this Tribunal, 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 IBC, 2016.

X. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.

14. In terms of the above, **CP(IB)/63(AHM)/2023** filed under Section 94 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.

15. Accordingly, **IA/273(AHM)2024** in CP(IB)/63(AHM)/2023 is disposed of.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

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SHAMMI KHAN
MEMBER (JUDICIAL)