NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB) 411(ND)2022

IN THE MATTER OF :

The Karur Vysya Bank Limited
Corporate Business Unit 2nd Floor,
MRJ Tower, Faiz Road Karol Bagh,
New Delhi- 110005

...Creditor/Applicant

Versus

Mr. Sourabh Goel
S/o Mr. Sushil Goel,
R/o H-2/12, Sector-11,
Rohini, Delhi - 110085

...Personal Guarantor/Respondent

Order Delivered on: 06.09.2022

SECTION: 95(1) of IBC 2016

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Vijay Kumar, Adv. Rekha Anand
For the Respondent : None

ORDER

PER SHRI L.N. GUPTA, MEMBER (T)

The present Application has been filed by Karur Vysya Bank Limited **(the 'Applicant/Creditor')** under Section 95(1) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019 for initiating the Insolvency Resolution Process **(the "IR Process")** against Mr. Sourabh Goel (hereinafter, referred to as **Personal Guarantor/Debtor**), who is the Guarantor of M/s. Mahesh Industries Private Limited **(the 'Corporate Debtor')**.

2. It is submitted by the Applicant that on 21.08.2015, the Guarantee Deed was executed and signed by the Respondent/Guarantor, Mr. Sourabh Goel extending guarantee to the loan granted to M/s.Mahesh Industries Private Limited under the agreement of Guarantee Deed dated 21.08.2015. The Applicant has placed on record a copy of the said Guarantee Deed executed by the Personal Guarantor in favour of the Applicant Bank.

3. It is further added by the Applicant that the loan accounts of the Corporate Debtor M/s. Mahesh Industries Private Limited became Non-Performing Asset (NPA) on 31.03.2017.

4. It has been stated by the Applicant that the Hon'ble Apex court vide its order dated 10.01.2022 has extended the limitation upto 29.05.2022

for filing of applications before any Court/Tribunal. It has been contended that since the present Application is filed on 27.05.2022, therefore the same is within limitation.

5. That the Applicant has filed detailed particulars of the transaction in Part III of its Application, pursuant to which it had claimed a total debt of Rs. 186,86,10,626.97. The Part III of the Application is reproduced below, for the sake of convenience :

Part – III

PARTICULARS OF DEBT		
1.	Total outstanding debt (including any interest or penalties)	Rs.186,86,10,626.97/- (Rupees One Hundred Eighty Six Crores Eighty Six Lacs Ten thousand Six hundred Twenty Six & Paisa Ninety Seven Only) with monthly compounded interest of 12.55% p.a. with additional 3.00% p.a. penalty Interest till 30.04.2022.
2.	Amount of debt in default	Rs.186,86,10,626.97/- (Rupees One Hundred Eighty Six Crores Eighty Six Lacs Ten thousand Six hundred Twenty Six & Paisa Ninety Seven Only) with monthly compounded interest of 12.55% p.a. with additional 3.00% p.a. penalty Interest till 30.04.2022 + Interest there upon from 01.05.2022
3.	Date when the debt was due	19.04.2017 (Date of Notice 13(2))
4.	Date when the default occurred	19.04.2017

5.	Nature of the debt	Nature of Debt	Outstanding as on 30.04.2022
		Working Capital Limit	Rs.186,86,10,626.97/-
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable), and details of securities	Primary: Hypothecation of Entire current assets of the company, including stock and receivables age not older than 90 Days. Collateral: ➢ Land for Godown purpose/Commercial Property bearing Revenue Survey No. 22/1, Area Acre 10-34 Guntha (43,901 sq. meters) Village: Varsana, Tal: Anjar, Dist: Kutch (Gujarat) standing in the name of M/s Mahesh Industries. ➢ Industrial Sheds/Land and Building measuring approximately 9,712 sq.mts situated at survey no. 22/2, paiki 1 paiki 1 (old revenue survey no. 13) Ahmadabad National Highway, Near Kiran Petro Pump, Village Varsana, Tal:Anjar, District Kutch (Gujarat) standing in the name of M/s Mahesh Industries Pvt Ltd.	
7.	Unsecured debt (as applicable)	N/A	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	N/A	

9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	N/A
10.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	N/A
11.	Record of default with the information utility, if any (attach a copy)	
12.	Details of succession certificate, or probate of a WILL, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925 (attach a copy)	N/A
13.	Provision of law, contract or other document under which debt has become due (attach a copy)	Debt has become due under the provisions of the contract act in term of the documents annexed as annexure. The limitation starts from 19.04.2017 from the date of notice under section 13(2)
14.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred	-
15.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	1. Notice Under 13(2) 2. Personal Guarantee Agreement 3. Calculation Sheet/Statement of Account along with certificate under banker's book of evidence
16	Statement by creditor in respect of	I/We Karur Vysya Bank Ltd , the secured

	excluded debts	Creditor hereby state that the debt(s) for which the insolvency resolution process application is filed does not include any- • liability to pay fine imposed by a court or tribunal; • liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; • liability to pay maintenance to any person under any law for the time being in force; • liability in relation to a student loan; any other debt prescribed under section 79(15)(e) of the Code
17	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the Code	I agree to forfeit my right to enforce my security during the period of the repayment plan. I do not agree to forfeit my right to enforce my security during the period of the repayment plan

6. It is averred by the Applicant that it had invoked the aforesaid Guarantee vide its notice dated 19.04.2017 issued to the Corporate Debtor as well as to the Personal Guarantor herein under the provisions of Section 13(2) of SARFAESI Act 2002.

7. It is further submitted by the Applicant that it had sent a Demand Notice via Speed Post dated 09.05.2022 in Form B under Rule 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor demanding payment of total outstanding amount of Rs.186,86,10,626.97. It is added by the Applicant that the Demand Notice could not be served by Speed Post. Therefore, the Demand Notice was served through publication made in the newspapers namely 'Jansatta' (Hindi) and 'Financial Express' (English) on 18.08.2022.

8. It is submitted by the Applicant that Personal Guarantor /Debtor has committed default in making repayment of the loan along with the interest to the Applicant.

9. Vide order dated 01.06.2022, this Adjudicating Authority had issued notice to the Personal Guarantor. It is stated by the Applicant that notice could not be served through email and speed post to the Respondent. Accordingly, this bench vide order dated 28.07.2022 has directed to issue notice via Publication.

10. In compliance of the aforesaid directions the Applicant has filed its Affidavit of Service dated 25.08.2022 stating that the notice has been issued through publication in newspapers namely 'Jansatta' (Hindi) and 'Financial Express' (English) on 18.08.2022.

11. With the filing of the present Application, the interim-moratorium has already commenced as stipulated under Section 96 (1) (a) in relation to all the debts of the Personal Guarantor. It shall cease to have effect on the date of admission of this Application and during the interim-moratorium period, the following are prohibited:

(a) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and

(b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

This shall, however, not apply to such transactions as notified, if any, by the Central Government in consultation with any Financial Sector Regulator.

12. The Applicant has not proposed the name of any Resolution Professional. Therefore, from the panel of IPs suggested by the IBBI, **this Bench appoints Mr. Paban Kumar Jain IP (Mobile No. 9212006084) having registration no. IBBI/IPA-001/IP-P01148/2019-2020/12490, email id < jainchi@hotmail.com > as the Resolution Professional** in the present matter subject to filing of an affidavit within seven days by him that there is no disciplinary proceeding pending against him.

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13. The Resolution Professional Mr. Paban Kumar Jain shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 read with the Rules made there under. **He is directed to examine the Application and make recommendations along with the reasons in writing for acceptance or rejection of this Application, within the stipulated time as envisaged under the provisions of Section 99 of the IBC, 2016.** The RP shall give a copy of the report under Section 99(7) to the Applicant/Creditor as soon as the same is filed before this Adjudicating Authority.

14. The Applicant and his Counsel and the Court Officer are directed to serve the copy of this Order along with copy of the Application and documents on the abovenamed Resolution Professional immediately by all modes for information and compliance of the order.

15. List the matter on 29.09.2022.

-Sd-
(L. N. GUPTA)
MEMBER (T)

-Sd- 6/9/22
(DHARMINDER SINGH)
MEMBER (J)