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

(IB)414(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. Chand Kumar Goyal
S/o Shri. Prem Sagar Goyal
Resident of 450, First Floor,
Deepali, Pitampura,
New Delhi – 110034 **...Personal Guarantor/Respondent**

Order Delivered on: 03.08.2022

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	: Adv. Rajat Srivastava, Adv. Amit Dhall

ORDER

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

The present Application has been filed by Karur Vysya Bank Limited **(the 'Creditor/Applicant')** under Section 95(1) r/w 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. Chand Kumar Goyal (hereinafter, referred to as **Personal Guarantor/Debtor**), who is the Guarantor of M/s. Giriraj Timber Private Limited **(the 'Corporate Debtor')**.

2. It is submitted by the Applicant that on 12.06.2015 and 13.06.2015, the Guarantee Deeds were executed and signed by Mr. Chand Kumar Goyal, thereby guaranteeing the loan that was granted to M/s. Giriraj Timber Private Limited under the agreement of Guarantee. The Applicant has placed on record a copy of the said Guarantee Deed executed by the Personal Guarantor in favour of the Creditor/Applicant.

3. It is stated by the Applicant that the loan account of the Corporate Debtor became Non-Performing Asset (NPA) on 13.02.2019.

4. That the Applicant has submitted particulars of the transaction in Part III of its Application, pursuant to which it has claimed a total debt of Rs.67,34,89,906.02/-. The Part III of the Application is reproduced overleaf :

Part – III

PARTICULARS OF DEBT		
1.	Total outstanding debt (including any interest or penalties)	Rs.67,34,89,906.02 (Rupees Sixty Seven Crores Thirty Four Lakhs Eighty Nine Thousands Nine Hundred Six and paise Two Only) as on 30.04.2022 with interest and expenses thereon from 01/05/2022
2.	Amount of debt in default	Rs.67,34,89,906.02 (Rupees Sixty Seven Crores Thirty Four Lakhs Eighty Nine Thousands Nine Hundred Six and paise Two Only) as on 30.04.2022 with interest and expenses thereon from 01/05/2022
3.	Date when the debt was due	20.02.2019 (Date of notice under section 13(2)) & Date of admission of liability on 23.02.2021.
4.	Date when the default occurred	20.02.2019

<table>
<tr><td></td><td></td><td colspan="2"></td></tr>
<tr><td rowspan="2">5.</td><td rowspan="2">Nature of the debt</td><td>Nature of Debt</td><td>Outstanding as on 30.04.2022</td></tr>
<tr><td>Working Capital Limit</td><td>Rs.67,34,89,906.02</td></tr>
<tr><td>6.</td><td>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</td><td colspan="2"><u>Primary</u>: Hypothecation of entire current assets of the Company present & future including stocks and receivables age not older then 90 days. Book Debts due from sister/Group Concern are also to be excluded for arriving at DP. Book Debts of age of more than 90 Number of Days shall not be taken in to account for arriving at DP under OCC.
<u>Collateral:</u>
➢ Commercial godown on plot of Khasra no. 73/10/2(0-01);73/10/3(0- 12);73/11/2(0-10), Village Mundka, Delhi admeasuring an area about 1050 sq yards standing in the name of Mrs.Shanta Goyal W/o-Mr. Pradeep Goyal valued at Rs.7.57Cr as on 22.02.2021
➢ Industrial land with sheds situated at revenue survey no. 296/1, village Mithirohar,National Highway 8-A, Taluka – Gandhidham, Distt. Kutch, Gujarat, admeasuring an area about 20537 sq Mts, standing in the name of Mrs.Suman Goyal W/o- Mr. Anil Goyal & Mrs.Veena Rani W/o-Mr. Chand Kumar Goyal valued at Rs. 19.91 Cr as on 03.12.2020</td></tr>
<tr><td>7.</td><td>Unsecured debt (as applicable)</td><td colspan="2">N/A</td></tr>
<tr><td>8.</td><td>Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)</td><td colspan="2">N/A</td></tr>
<tr><td>9.</td><td>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)</td><td colspan="2">N/A</td></tr>
<tr><td>10.</td><td>Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)</td><td colspan="2">N/A</td></tr>
<tr><td>11.</td><td>Record of default with the information utility, if any (attach a copy)</td><td colspan="2"></td></tr>
<tr><td>12.</td><td>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)</td><td colspan="2">N/A</td></tr>
<tr><td>13.</td><td>Provision of law, contract or other document under which debt has become due (attach a copy)</td><td colspan="2">Debt has become due under the provisions of the contract act in term of the documents annexed as annexure.
The limitation starts from 20.02.2019 from the date of notice under section 13(2)</td></tr>
<tr><td>14.</td><td>A statement of bank account where deposits are made or credits received normally by the creditor in respect of the</td><td colspan="2">-</td></tr>
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	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 for both the company	1. Notice under Section 13(2) 2. OTS offer letter 3. Account Statement 4. Personal Guarantee Agreement
16	Statement by creditor in respect of excluded debts	I/We Karur Vysya Bank Ltd , the secured 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 For The Karur Vysya Ba

5. It is stated by the Applicant that it has invoked the aforesaid Guarantee vide its Notice dated 20.02.2019 issued to the Corporate Debtor as well as to the Personal Guarantor herein under the provisions of Section 13(2) of SARFAESI Act 2002.

6. It is further stated by the Applicant that it had sent a Demand Notice in Form B via Speed Post dated 07.04.2022 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

the total outstanding amount of Rs. 67,34,89,906.02/-. The Tracking report has been placed at page no. 13 of the application.

7. The Applicant has also submitted that it has served the copy of this Application to the Respondent/Personal Guarantor via Speed Post on 24.06.2022 and Courier on 22.06.2022 in compliance of Section 95(5) of IBC, 2016.

8. It is finally 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 and pursuant to the notice, the Ld. Counsel for the Personal Guarantor has appeared on 28.07.2022.

10. 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 and 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.

11. The Applicant has not proposed the name of any Resolution Professional. Therefore, from the panel of IPs suggested by the IBBI**, this Bench appoints Ms. Santosh Goel IP having its registration no. IBBI/IPA-001/IP-P00823/2017-2018/11399 and email id casantoshgoel@gmail.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.

12. The Resolution Professional Ms. Santosh Goel 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.

13. 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.

14. List the matter on 17.08.2022.

-Sd/-
3.08.22

(L. N. GUPTA)
MEMBER (T)

-Sd/-

(DHARMINDER SINGH)
MEMBER (J)