

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

IA. NO. 1611/ND/2023
IN
Company Petition No. (IB)-417(ND)/2022

IN THE MATTER OF:

Karur Vysya Bank

... Applicant/Creditor

Versus

Mr. Vaibhav Singhal

... Respondent/Personal Guarantor

AND IN THE MATTER OF IA. NO. 4675/ND/2022:

Roshan Lal Jain
Resolution Professional
46-B Shalimar Bagh,
Delhi-110088

...Applicant

Order Delivered on: 12.12.2023

SECTION: Section 99-100 read with Section 95 of IBC 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the RP : RP in Person

For the Respondent : Ms. Pratiti Rungta, Advocate

ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

The present IA No. 1611 of 2023 has been filed by Mr. Roshan Lal Jain (from now on referred to as the '**RP**'), of Personal Guarantor Mrs. Vaibhav Singhal (from now on referred to as the '**Respondent**'/'**Personal Guarantor**') placing therewith the Report prepared by the RP under Section 99 of IBC, 2016.

2. To put the facts concisely, the underlying main Petition CP (IB)-417/ND/2022 was filed by Karur Vysya Bank against the Personal Guarantor namely, Mr. Vaibhav Singhal under Section 95 of IBC 2016, to initiate the IR process. Vide order dated 03.08.2022, this Adjudicating Authority appointed Mr. Vishva Deep Sharma as the Resolution Professional of the Personal Guarantor and directed him to file its Report under Section 99 of IBC, 2016. However, since Mr. Vishva Deep Sharma failed to discharge his functions as RP, he was replaced by Mr. Roshan Lal Jain as the RP of the Respondent Vide order dated 20.02.2023 of this Adjudicating Authority with a direction to him to file the Report within 14 days.

3. In compliance with the order dated 20.02.2023 passed by this Adjudicating Authority, the present IA-1611/2023 has been filed by Mr. Roshan Lal Jain RP enclosing therewith the Report under Section 99 of IBC 2016 recommending admission of the Section 95 application IB-417/ND/2022 in respect of the Personal Guarantor.

4. The relevant paragraph of the Report filed with IA 1611/ND/2023 containing the recommendation of the RP reads thus:

Considering the above, it is recommended by the RP that the application for initiation of insolvency resolution process filed by The Karur Vysya Bank Limited against Mr. VAIBHAV SINGHAL, Personal Guarantor to M/s. Savemax Wholesale Club Private Limited and M/s. Bishan Saroop Ram Kishan Agro Private Limited be hereby admitted under the orders and directions of this Hon'ble Tribunal.

5. While making its recommendation of admission of Section 95 application against the Personal Guarantor, the RP has submitted the following in its Report filed under Section 99 of IBC, 2016:

G- REQUIREMENTS UNDER SECTION 95

(i) The following table captures the requirements set out in Section 95 of the Code and the respective observations of the RP:

| Requirement(s) | Observation(s) |
|---|---|
| <p>Section 95(4) An Application filed under section 95(1) shall be accompanied with details and documents relating to-</p> <p>(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application</p> | Relevant information, details and supporting documents are accompanied with the Application |
| <p>(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and</p> | Refer Para 10E |
| <p>(c) Relevant evidence of such default or non-repayment of debt.</p> | Refer Para 10D |
| <p>Section 95(5) The creditor shall also provide a copy of the application made under section 95 (1) to the debtor</p> | The Creditor has served the copy of the Application to the Personal Guarantor on 28.05.2022, via Courier. |
| <p>Section 95(6) The application shall be in such form and manner and accompanied by such fee as may be prescribed</p> | The application submitted by the Creditor is in the prescribed form, i.e., 'Form - 'C' of the Rules and it is |



| | |
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| | accompanied by the prescribed fee of Rs. 2000/ -. |
| Section 95(7) The details and documents required to be submitted under section 95(4) shall be such as may be specified | IBBI is yet to specify any regulation in this regard |

(ii) Thus, the Application provides for the details and documents as required under Section 95 of the Code.

6. On issuance of the notice on the Report filed under Section 99 of IBC 2016, Ld. Counsel for the Personal Guarantor appeared on 28.03.2023 and was granted 2 weeks to file a reply. Despite Opportunity, the Respondent/ Personal Guarantor failed to file its reply. Even during the final hearing of the matter on 20.11.2023, Ms. Pratiti Rungta, Ld. Counsel for the Personal Guarantor submitted that she has nothing to say in opposition to the application/report filed by the RP and she does not wish to file any reply. In this backdrop, she requested this Adjudicating Authority to pass appropriate orders.

7. We heard the submissions of the RP and Personal Guarantor. We have also perused the Application filed under Section 95 of IBC, 2016, and the RP's Report filed under Section 99 of IBC 2016.

8. The Creditor has placed on record the Guarantee Deeds/Agreements executed and signed by the Respondent herein Mr. Vaibhav Singhal on 30.04.2015 and 08.01.2016, thereby guaranteeing the loans granted to M/s Savemax Wholesale Club Private Limited and M/s Bishan Saroop Ram Kishan Private Limited respectively.

9. It is seen from the record that the loan account of the Corporate Debtors M/s. Savemax Wholesale Club Private Limited and M/s. Bishan Saroop Ram Kishan Private Limited became a Non-Performing Asset (NPA) on 30.05.2018 and 09.03.2018 respectively.

10. Further, it is seen from the record that the Creditor / Karur Vyasa Bank invoked the aforesaid Guarantees vide its Notice dated 07.11.2019 issued under the provisions of Section 13(2) of the SARFAESI Act, 2002 in respect of M/s. Savemax Wholesale Club Private Limited and Notice dated 13.04.2018 in respect of M/s. Bishan Saroop Ram Kishan Private Limited Wholesale Club Private Limited.

11. It is also seen from the record that the Creditor / Karur Vyasa Bank had sent Demand Notices 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 via Speed Post dated 29.03.2022 to the Personal Guarantor. It has been added that the Demand Notices were served by Speed Post on 31.03.2022 and 02.04.2022 and the tracking reports are at Page 14 and 41 of the Application respectively.

12. The Application filed on 28.05.2022 is well within 03 years from the date of invocation of guarantees.

13. Since despite opportunities, the Respondent failed to file its reply to the RP's report, and during the hearing, its Counsel submitted that it has nothing to say in the matter, we proceed ahead in the matter.

14. Given the above, the Creditor has been able to establish its debt and default beyond doubt relating to the Guarantees given by the Respondent/ Personal Guarantor. Hence, we have no reason to disagree with the recommendation made by the RP for admitting the present Application. **The Application is accordingly, admitted.**

15. As a sequel of admission of the present application, the Moratorium under Section 101 of IBC, 2016 shall commence in relation to all the debts of the Respondent/Personal Guarantor. During the moratorium period –

- (a) Any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed;
- (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and
- (c) the Respondent shall not transfer, alienate, encumber, or dispose of any of the assets or his legal right or beneficiary interest therein.

The moratorium shall cease to have effect at the end of 180 days.

16. A public notice shall be issued by the RP, within seven days of passing of this order, inviting claims from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the RP with whom the claims have to be registered, and the last date for the submission of the claims. The said notice shall be –

(a) published in English and one Vernacular Language newspaper which is in circulation in the State where the debtor resides;

(b) affixed in the premises of this Adjudicating Authority; and

(c) placed on the website of the Adjudicating Authority.

17. The RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106, 107, 108, 112, and 113 of IBC, 2016, with due deference to the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in the discharge of his duties as RP.

18. A copy of this order along with a copy of the application as well as the Report of the Resolution Professional shall be provided to the Creditor (Applicant), Respondent/Personal Guarantor, and IBBI, by the Registry/Court Officer within 07 days from today.

19. **IA 1611/ND/2023 is disposed of accordingly.** To come up for consideration of Status Report to be filed by RP, within 08 weeks.

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

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)