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

**(IB)417(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

**...Applicant/Creditor**

**Versus**

**Mr. Vaibhav Singhal**
S/o Shri. Gian Chand Das
25/75, Shakti Nagar,
Malka Ganj, Delhi – 110007

**...Personal Guarantor/Respondent**

**Order Delivered on: 03.08.2022**

**SECTION: 95(1) of IBC 2016**

**CORAM:**

**SHRI. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**
**SHRI. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

| | |
|---|---|
| **For the Applicant** | : Adv. Vijay Kumar, Adv. Rekha Anand |
| **For the Respondent** | : Ms. Pratiti Rungta |

## 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) 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. Vaibhav Singhal (hereinafter, referred to as **Personal Guarantor/Debtor**), who is the Guarantor of M/s. Savemax Wholesale Club Private Limited and M/s. Bishan Saroop Ram Kishan Agro Private Limited **(the 'Corporate Debtors')**.

2. It is submitted by the Applicant that on 30.04.2015, the Guarantee Deeds/Agreements were 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. The Applicant has placed on record copies of the said Guarantee Deeds executed by the Personal Guarantor in favour of the Applicant Bank.

3. It is further submitted by the Applicant 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 Non-Performing Asset (NPA) on 30.05.2018 and 09.03.2018 respectively.

4. That the Applicant has submitted particulars of the transactions in Part III of its Application, pursuant to which it has claimed a total debt of Rs. 47,70,31,121.40/- in respect of M/s. Savemax Wholesale Club Private Limited and total debt of Rs.33,20,64,082.36/- in respect of M/s. Bishan Saroop Ram Kishan Private Limited respectively. The Part III in of the Application is reproduced below :

Part – III

| PARTICULARS OF DEBT | | |
|---|---|---|
| 1. | Total outstanding debt<br>(including any interest or penalties) | 1.M/s Savemax Wholesale Club Private Limited<br>Rs.47,70,31,121.40/-on 30.04.2022<br>2.M/s Bishan Saroop Ram Kishan Agro Pvt Ltd<br>Rs.33,20,64,082.36 /-on 30.04.2022 |

<table>
<tr><td>2.</td><td>Amount of debt in default</td><td>1.<u>M/s Savemax Wholesale Club Private Limited</u>
<table>
<tr><td>Facility</td><td>Total Outstanding jointly & severally along with Corporate debtor as on 30.04.2022 (Amount in Rupees)</td></tr>
<tr><td>Cash Credit Open Loan</td><td>45,78,42,638.90</td></tr>
<tr><td>Term Loan-Machinery</td><td>1,91,88,482.48</td></tr>
<tr><td>Total</td><td>Rs. 47,70,31,121.40</td></tr>
</table>
2.M/s Bishan Saroop Ram Kishan Agro Pvt Ltd
<table>
<tr><td>Nature of Debt</td><td>Total Outstanding jointly & severally along with Corporate debtor as on 30.04.2022 (Amount in Rupees)</td></tr>
<tr><td>Open Cash Credit</td><td>33,20,64,082.36</td></tr>
<tr><td>Total</td><td>33,20,64,082.36</td></tr>
</table></td></tr>
<tr><td>3.</td><td>Date when the debt was due</td><td>1.<u>M/s Savemax Wholesale Club Private Limited</u><br>07.11.2019 (Date of Notice under 13(2))<br>2.<u>M/s Bishan Saroop Ram Kishan Agro Pvt Ltd</u><br>13.04.2018 (Date of Notice under 13(2))</td></tr>
<tr><td>4.</td><td>Date when the default occurred</td><td>1.<u>M/s Savemax Wholesale Club Private Limited</u><br>07.11.2019 (Date of Notice under 13(2))<br>2.<u>M/s Bishan Saroop Ram Kishan Agro Pvt Ltd</u><br>13.04.2018 (Date of Notice under 13(2))</td></tr>
<tr><td>5.</td><td>Nature of the debt</td><td>1.<u>M/s Savemax Wholesale Club Private Limited</u><br>OCC & Term Loan<br>2.<u>M/s Bishan Saroop Ram Kishan Agro Pvt Ltd</u><br>OCC</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>I .<u>M/s Savemax Wholesale Club Private Limited</u><br><br>Primary :<br>OCC/PCL/FBP/CEL: Pari Passu Charge on the entire current assets of the Company, including stocks and receivables age not older than 90 days. Debtors of Sister / group concerns shall not be included for DP calculation purpose.<br>ILC/FLC/BC: Hypothecation of goods received under LC and 25% Cash margin.<br>BG: Counter guarantee and 25% cash margin (in case of disputed liability, cash margin is 100%)<br>Term Loan: Machineries purchased out of Bank Finance<br><br>Collateral Security :<br><br>OCC/Term Loan /ILC/FLC/BG:<br>EM Charge on the following Properties:<br>1. Vacant non-agricultural plot situated at Khata No.3, Khasra No.574, min & Khata No.24, Khasra No.574 in village Dalapatpur, Pargana, Tehsil and Distt. Moradabad, UP admeasuring an area about 2 Acres standing in the name of Mr. Gian Chand Dass S/o Mr. Ram Kishan Dass.<br>2. Vacant non-agricultural plot situated at Khata No.29, Khasra No.569 in village Dalapatpur, Pargana, Tehsil and Distt. Moradabad, UP admeasuring an area about 1.34 Acres standing in the name of Mr. Gian Chand Dass S/o Mr. Ram Kishan Dass.<br>3. Non-Agricultural land (Godown) situated at Khata No.199, Khasra No.1 & 2, Village-Daulra, Pargana, Tehsil and District Moradabad, UP admeasuring 9389.18 Square Meters standing in the name of M/s V.G. Goldchem Pvt. Ltd.</td></tr>
</table>

| | | |
|---|---|---|
| | | II. <u>M/s Bishan Saroop Ram Kishan Agro Pvt Ltd</u><br>Equitable Mortgage Charge on the following Properties:<br><br>1. Land & Building out of Survey no.324/2, measuring an area of acres 4-02 Gunthas of land and industrial property And Survey no.324/3 measuring an area of acres 3-39 Gunthas of land and industrial property situated at Village Mithi Rohar, Tq. Gandhidham, Kutch, Gujarat, belonging to and standing in the name of M/s Bishan Saroop Ram Kishan Agro (P) Ltd.. valued at Rs.43,28,00,000.00<br>2. Residential Plot no.449, Saraswati Kunj, The Saraswati Kunj Co-operative House Building Society Ltd., Part-1, Wazirabad, Sector-53, Gurgaon, Haryana, measuring 250 Sq. Yds. belonging to and standing in the name of Sh. Gian Chand S/o Mr. Ram KishanDass valued at Rs. 67,50,000.00<br>3. Residential Plot no.447, Saraswati Kunj, The Saraswati Kunj Co-operative House Building Society Ltd., Part-1, Wazirabad, Sector-53, Gurgaon, Haryana, measuring 250 Sq. Yds. belonging to and standing in the name of Smt. Baleswari Devi valued at Rs.67,50,000.00<br>4. Residential Plot no.426, Saraswati Kunj, The Saraswati Kunj Co-operative House Building Society Ltd., Part-1, Wazirabad, Sector-53, Gurgaon, Haryana, measuring 276 Sq. Yds. belonging to and standing in the name of Smt. Seema Gupta valued at Rs. 74,52,000.00<br>5. Residential Building at Plot No.75, Block no.25, measuring 200 Sq. Yds., situated at Shakti Nagar, Delhi-, belonging to and standing in the name of Smt. Baleswari Devi valued at Rs.6,10,21,000.00 |
| 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) | I .<u>M/s Savemax Wholesale Club Private Limited</u><br><br>PariPassu Charge on the entire current assets of the Company, including stocks and receivables age not older than 90 days. Debtors of Sister / group concerns shall not be included for DP calculation purpose.<br><br>II.<u>M/s Bishan Saroop Ram Kishan Agro Pvt Ltd</u><br>Pari Passu Charge on the entire current assets of the Company, with other lenders. |
| 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) | I. <u>M/s Savemax Wholesale Club Pvt Ltd</u><br>Debt has become due under the provisions of the contract act in term of the documents annexed as annexure. |

| | | |
|---|---|---|
| | | The limitation starts from 07.11.2019 from the date of notice under section 13(2)<br>II. <u>M/s Bishan Saroop Ram Kishan Agro Pvt Ltd</u><br>Debt has become due under the provisions of the contract act in term of the documents annexed as annexure.<br>The limitation starts from 13.04.2018 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 | I. **M/s Savemax Wholsesale Club Pvt LTd**<br>• Notice Under 13(2)<br>• Personal Guarantee Agreement<br>• Account Statement<br>• OTS offer Letter Dated 16.08.2021<br>II. **<u>M/s Bishan Saroop Ram Kishan Agro Pvt Ltd</u>**<br><br>• Notice Under 13(2)<br>• Personal Guarantee Agreement<br>• Account Statement<br>• OTS Letter |

| | | |
|---|---|---|
| 16 | Statement by creditor in respect of excluded debts | I 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-<br>• liability to pay fine imposed by a court or tribunal;<br>• liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;<br>• liability to pay maintenance to any person under any law for the time being in force;<br>• 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.<br>I do not agree to forfeit my right to enforce my security during the period of the repayment plan. |

5. It is submitted by the Applicant that it had invoked the aforesaid Guarantees vide its Notice dated 07.11.2019 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 issued to the Corporate Debtors as well as to the Personal Guarantor herein under the provisions of Section 13(2) of the SARFAESI Act, 2002.

6. It is further submitted by the Applicant that it 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 annexed at page no. 14 and 41 respectively of the application.

7. The Applicant has also submitted that it has served the copy of this Application to the Respondent/Personal Guarantor vide Courier and

Speed Post on 24.06.2022 and 25.06.2022 respectively 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 Mr. Vishva Deep Sharma having its registration no.**

**IBBI/IPA-001/IP-P01017/2017-2018/11668, and email id videeco@yahoo.co.in as 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 Mr. Vishva Deep Sharma 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- -Sd-

**(L. N. GUPTA)**
**MEMBER (T)**

**(DHARMINDER SINGH)**
**MEMBER (J)**