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

(IB)416(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. R.K. Sharma
S/o Satya Dev Sharma
H. No. 4512, Sector-B 5 & 6,
Vasant Kunj
New Delhi – 110070

...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 : None

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. R.K Sharma (hereinafter, referred to as **Personal Guarantor/Debtor**), who is the Guarantor of M/s. Indian Technometal Company Limited **(the 'Corporate Debtor')**.

2. It is submitted by the Applicant that on 08.12.2012, the Guarantee Deed/Agreement was executed and signed by Mr. R K Sharma, thereby guaranteeing the loan granted to M/s. Indian Technometal Company Limited under the Personal Loan Agreement. The Applicant has placed on record a copy of the said Guarantee Deed executed by the Personal Guarantor in favour of the Applicant.

3. It is further added by the Applicant that the loan account of the Corporate Debtor became Non-Performing Asset (NPA) on 12.06.2013.

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. 59,95,47,848.96/-. The Part III of the Application is reproduced overleaf :

Part – III

PARTICULARS OF DEBT		
1.	Total outstanding debt (including any interest or penalties)	Rs. 59,95,47,848.96/- as per Recovery Certificate no. 414/2018 dated 17.04.2018+ Interest thereupon from 01/03/2022
2.	Amount of debt in default	Rs. 59,95,47,848.96/-(Rupee Fifty Nine Crore Ninety Five Lacs, Forty Seven Thousand eight hundred forty eight and ninety Six Paisa)as on 28.02.2022 + Interest thereupon from 01/03/2022
3.	Date when the debt was due	17.04.2018 (Date of recovery Certificate)
4.	Date when the default occurred	17.04.2018 (Date of recovery Certificate)
5.	Nature of the debt	Nature of Debt: Working Capital — Outstanding as on 28/02/2022: 59,95,47,848.96/-
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 :** Pari passu 1st charge on current assets of the Company alongwith other working capital bankers. Collateral: First Pari passu charge on Two Industrial properties at Saharanpur, UP and Odissa, as per the following details : • Khata No. 826/119, Plot No. 52/3456, Khata No.826/194, Plot No. 52,Khata No. 802, Plot No,53, Mouza-Nizgarh,Tehsil Sukinda, P S no.145, Sukinda, Jajpur,Odissa standing in the name of M/s. B T M Chrome Alloys Private Ltd • Second Paripassu Charge over all fixed Blocks/ Assets of the Company (Both Present & Future), Including its Immovable Properties consisting of factory land & building admeasuring 8994.60 sq yards at

		village – Fakeertakya, Gajuwaka Mandal within the limits of Greater Vishakhapatnam Municipal Corporation APIIC Ltd. 1.
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)	1. Joint Consortium loan Documents 2. Deed of Corporate Guarantee by M/s Indian Technolime Company Limited 3. Deed of Corporate Guarantee by M/s BMT Chrome Alloys Private Limited 4. Deed of Corporate Guarantee by M/s Indian Technomac Company Limited 5. Personal Guarantee Agreement by Mr. R. K Sharma 6. Agreement for credit facility 7. Power of attorney for collection of Bills, Book Debts and other receivables. 8. KYC of Directors, Personal Guarantors & Corporate Guarantors 9. Statement of accounts showing arrear.
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. Copy of Recovery Certificate 2. Copy of Personal Guarantee Agreement 3. Copy of Demand Notice 4. Account statement attached 5.The copy of Banker's Book of Evidence.
16	Statement by creditor in respect of excluded debts	I [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 [insert description] during the period of the repayment plan. I do not agree to forfeit my right to enforce my security [insert description] during the period of the repayment plan.

5. It is averred by the Applicant that the Notice under the SARFAESI Act was issued on 09.12.2013 and DRT had issued Recovery Certificate No. 414/2018 dated 12.04.2018 against the Respondent Mr. R.K. Sharma.

6. It is further submitted by the Applicant that it had sent a Demand Notice dated 31.03.2022 via Speed Post dated 04.04.2022 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 total outstanding amount of Rs.59,95,47,848.96/-. The Applicant has submitted that the Demand Notice could not be served on the Respondent by Speed Post and therefore, the Demand Notice was served through newspaper publication made in the newspapers 'Jansatta' (Hindi) and 'Financial Express' (English) on 11.05.2022.

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

8. It has been 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 Applicant has filed Affidavit of Service depicting service via courier.

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. Brijesh Kumar Tamber IP having its registration no. IBBI/IPA-002/IP-N00523/2017-2018/11593 and email id officeofbrijeshktamber@gmail.com as the Resolution Professional**

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. Brijesh Kumar Tamber 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/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(DHARMINDER SINGH)
MEMBER (J)