

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

(IB)547(ND)2022

IN THE MATTER OF :

IDBI Bank Limited

Registered Office at :
IDBI Tower, World Trade Centre Complex,
Cuffe Parade, Mumbai and a Branch amongst
Others at 1st Floor, Videocon Tower,
E-1, Jhandelwalan Extension, Delhi - 110055

Through

Shri. Anil Kumar Mittal,

Insolvency Professional
Having Office at :
5/99, Sector – 2, Rajender Nagar,
Sahibabad, Distt. Ghaziabad,
Uttar Pradesh - 201005

...Applicant/ Creditor

Versus

Smt. Seema Gupta

W/o Shri. Gagan Chand Aggarwal
R/o 25/75, Shakti Nagar,
New Delhi - 110007

...Respondent/Personal Guarantor

Order Delivered on: 22.08.2022

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. Urwick Hans, Adv. Sagar Diwan
For the Respondent	: None

ORDER

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

IDBI Bank Limited through its Resolution Professional Shri. Anil Kumar Mittal **(the “Applicant/ Creditor”)** has filed the present Application 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 Smt. Seema Gupta (hereinafter, referred to as **“Personal Guarantor/Debtor”**), who is the Guarantor of M/s. Savemax Wholesale Club Private Limited. **(the “Corporate Debtor”)**.

2. It is stated by the Applicant/Creditor that the Corporate Debtor had requested for Working Capital Facilities for its working capital requirements. Pursuance to the request of the Corporate Debtor, the Applicant vide its sanction letter bearing Ref. No. IDBI/DEL/MCG/16-17/572A, IDBI/DEL/MCG/16-17/572B and IDBI/DEL/MCG/16-17/572C dated 23.11.2016 sanctioned the Working Capital Facilities/ Financial Assistance of Rs. 30 Crore and Corporate Debtor offered Personal Guarantees from its Directors/Promoters.

3. It is further stated by the Applicant that the said Working Capital Facilities were duly availed by the Corporate Debtor by executing Security Documents. It is added that the Personal Guarantor had executed the

Personal Guarantee Agreements dated 09.12.2016 in favour of Applicant in order to secure the Financial Assistance granted by Financial Creditor to the Corporate Debtor.

4. It is further submitted that against the total Fund Based Limit of Rs. 10 Crores only an amount of Rs. 7.50 Crore was disbursed and the remaining facility was cancelled. Similarly, the Non-Fund Based Limit of Rs. 20 Crore was also cancelled. Thus, the Corporate Debtor had been availing the Fund Based Limit of Rs. 7.50 Crore.

5. It is further submitted by the Applicant that the Corporate Debtor failed to maintain the financial discipline and did not repay its dues, interest/penal interest and other charges as per the terms and conditions agreed upon and accordingly, the account was declared as NPA ("Non-Performing Asset") w.e.f. 31.03.2018.

6. It is stated by the Applicant that as a consequence, it issued a Recall Notice to the Corporate Debtor bearing Ref. No. IDBI/MCG/SWCPL/2017-18/630A on 30.06.2018 to clear the outstanding dues and liabilities in terms of the terms and conditions set out in the Financing/Security Agreements. A corrigendum Ref. No. IDBI/MCG/SWCPL/2017-18/14 to the recall notice was also issued on 17.04.2018.

7. That the Applicant/Creditor has detailed the transaction in Part III of its Application, pursuant to which it had claimed a total debt of Rs. 15,19,84,972.42/- as on 01.09.2021. The extracts of Part III of the Application is reproduced overleaf :

Part-III

Particulars of Financial Debt		
1.	Total Amount (including any interest of penalties)	Rs. 15,19,84,972.42/- (Rupees Fifteen Crore Nineteen Lakhs Eighty-Four Thousand Nine Hundred Seventy-Two and Forty-Two Paise only) as on 01.09.2021 IDBI Bank reserves the right to file updated claim along with interest, additional/further interest further interest, penal interest, default interest, liquidated damages, fees, charges or any other amounts as per the terms of the financial agreements/contracts at the time of filing of its claim as per the IBC, read with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (as amended) or under any other applicable law, which may become due and payable on such date.
2.	Amount Claimed to be in default	Rs. 15,19,84,972.42/- (Rupees Fifteen Crore Nineteen Lakhs Eighty-Four Thousand Nine Hundred Seventy-Two and Forty-Two Paise only) as on 01.09.2021 along with future interest payable from 02.09.2021
3.	Date on which debt was due	Notice of Invocation of Guarantee issued on 30.06.2018 by the Applicant against the Personal Guarantor, since the Corporate Debtor failed to pay the outstanding dues in terms of the Recall Notice dated 03.10.2017. Demand Notice dated 28.09.2021 was issued by the Applicant to the Personal Guarantor under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and in the format prescribed in Form B of the PG AAA Rules, calling upon the Personal Guarantor to pay forthwith the defaulted amount. The Demand Notice was duly served on the Personal Guarantor on 06.10.2021. True copy of the Demand Notice dated 28.09.2021 has been annexed herewith and has been referred to as Annexure A3
4.	Date on which default occurred.	31.03.2018 (Date of NPA) where the corporate debtor failed to maintain the financial discipline and could not pay off the dues. Accordingly Financial Creditor sent a recall notice dated 03.10.2017 and invoked personal guarantee vide notice bearing Reference No. IDBI/SWCPL/2018-19/46 dated 30.06.2018. The true copy of the recall notice and true copy of the invoked personal guarantee notice is enclosed herewith and marked as Annexure A-4(Colly)
5.	Nature of debt	The Corporate Debtor (" M/s Savemax Wholesale Club Private Limited ") approached the Financial Creditor through its Director/Personal Guarantors and requested

		for sanction of credit facility i.e Working Capital Facility. In pursuance to the request, the Financial Creditor vide its Sanction Letter bearing Ref. No. IDBI/DEL/MCG/16-17/572A, IDBI/DEL/MCG/16-17/572B and IDBI/DEL/MCG/16-17/572C dated 23.11.2016, sanctioned the Working Capital Facilities of Rs.30 Crores (Rupees Thirty Crores only). The true copy of sanction letters is enclosed and marked as Annexure A-5(colly). The Corporate Debtor submitted Board resolution dated 07.12.2016 thereby authorizing Personal Guarantor herein to accept the terms and conditions of sanction and to execute the finance/security documents in favour of the Financial Creditor. The true copy Board Resolution is annexed herewith Annexure A-6. The Financial Creditor served notice dated 07.09.2019 under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Personal Guarantor True Copy of the Notice under section 13(2) dated 07.09.2019 has been annexed herewith and marked as Annexure A7
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	No security was furnished by the Personal Guarantor except for Personal Guarantee executed dated 09.12.2016 in favour of the Financial Creditor to secure the liability of the Corporate Debtor in respect of the Working Capital Facility of Rs. 30 Crores sanctioned and availed by the Corporate Debtor. The liability of the said Respondent herein is joint, several and co-extensive with that of the Corporate Debtor However, The Corporate Debtor created mortgage over the following properties: - Atrium Floor Unit No. A-40, Parker Mall, G.T. Road, NH-1, Sector-62, Kundli, Sonapat, Haryana - Atrium Floor Unit No. A-41, Parker Mall, G.T. Road, NH-1, Sector-62, Kundli, Sonapat, Haryana and to deposit the title deeds as security for the said Working Capital Facility. The Corporate Debtor submitted Board Resolution dated 17.01.2017 for creation of mortgage in respect of the said properties. The true copy of the Personal Guarantee agreement is annexed herewith as Annexure A-8.
7.	Unsecured debt (as applicable)	Not Applicable
8.	Details of retention of title	Not Applicable

	arrangements (if any) in respect of goods to which the debt refers (attach a copy)	
9.	Details of any mutual credit, mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	Not Applicable
10.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	None in respect of Smt. Seema Gupta The Corporate Debtor was admitted by NCLT New Delhi Bench vide its order dated 28.03.2018 for Corporate Insolvency Resolution Process (CIRP) under IBC, considering the petition U/s 9 of IBC filed by an operational creditor named "Parsvnath Developers Ltd." vide petition No. IB-138(ND)-2018. That Sh. Arvind Garg has been appointed as Interim Resolution Professional. Subsequently, Hon'ble NCLT, Delhi vide its order dated 30.01.2019 allowed the application for liquidation of the Corporate Debtor. An Original Application was filed by the Financial Creditor before the Hon'ble DRT-III, New Delhi for recovery of Rs.9,93,37,298.96 (Rupees nine crore Ninety-Three lakh Thirty-Seven thousand two hundred Ninety-Eight and Ninety-Six paise only) filed against the Personal Guarantor and the same is pending and is now fixed for completion of pleadings. The true copy of the above orders has been attached herewith and marked as Annexure A-9(Colly)
11.	Record of default with the information utility, if any (attach a copy)	The record of default with the information utility is available on National E-Governance Service Limited dated 27.09.2021 vide Unique Debt Identifier No: AABCI8842G_7600655100000161 submitted by the Financial Creditor. True Copy of the Record of default has been annexed herewith and has been marked as Annexure A-10
12.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable).	Not Applicable

	Under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	
13.	Provision of law, contract or other document under which debt has become due (attach a copy)	i. Sanction Letter Ref. No. IDBI/DEL/MCG/16-17/572A, IDBI/DEL/MCG/16-17/572B and IDBI/DEL/MCG/16-17/572C dated 23.11.2016 ii. Facility Agreement dated 09.12.2016 iii. Guarantee Agreement by Smt. Seema Gupta dated 09.12.2016 iv. Recall Notice Ref No IDBI/MCG/SWCPL/2017-18/630A _ dated 03.10.2017 v. Notice invoking Personal Guarantee Ref No. IDBI/SWCPL /2018-19/46 dated 30.06.2018. vi. Insolvency Demand Notice dated September 28, 2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 As per the Personal Guarantee agreement dated 09.12.2016 under Article 6 of the agreement the Personal Guarantor is liable to pay the debts. Guarantor agrees and gives consent that lender may treat the Guarantor as if it were the Corporate Debtor/Principal Borrower to the lenders and under all the relevant clauses of the Construction Facility Agreement dated 09.12.2016. As per section 95 of the Insolvency Bankruptcy Code, 2016 (Amendment 2019), any creditor whose debts are outstanding from the principal borrower can proceed against the personal guarantor to recover the outstanding debt amount under the Insolvency Bankruptcy Code, 2016. Section 126 of the Indian Contract Act defines a contract of guarantees a contract to perform the promise or discharge the liability of a third person in case of his default. Under Section 128 of Indian Contract Act, the liability of surety is co-extensive that of the principal debtor that means the surety is liable to the same extend as the principal debtor. The debt is also due as no repayment has been provided by the Personal Guarantor pursuant to the Invocation cum Demand Notice and the IBC Demand Notice. The Default Amount as demanded under the IBC Demand Notice has not been repaid by the Personal Guarantor within fourteen days of receipt of the IBC Demand Notice.
14.	A statement of the bank account where deposits	System reflecting statement of account of the Corporate Debtor along with Bankers Book of Evidence is annexed as Annexure A-11.

	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 application in order to prove the existence of debts and the amount in default	i. Sanction Letter Ref. No. IDBI/DEL/MCG/16-17/572A, IDBI/DEL/MCG/16-17/572B and IDBI/DEL/MCG/16-17/572C dated 23.11.2016 Facility Agreement dated 09.12.2016. ii. Guarantee Agreement by Smt. Seema Gupta dated 09.12.2016 iii. Recall Notice Ref No IDBI/MCG/SWCPL/2017-18/630A dated 03.10.2017 iv. Notice invoking Personal Guarantee Ref No. /SWCPL/2018-19/46 dated 30.06.2018 v. Insolvency Demand Notice dated September 28, 2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 vi. Record of Default as submitted to and held by the National e-Governance Services Limited
16.	Statement by the creditor in respect of excluded debts	I, Anil Kumar Mittal, Insolvency Professional on behalf of IDBI Bank state that the debt(s) for which the insolvency resolution process application is filed does not include any: - (i) liability to pay fine imposed by a court or tribunal; (ii) liable to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; (iii) liability to pay maintenance to any person under any law for the time being in force; (iv) liability in relation to a student loan; (v) 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.	The Applicant is not a Secured Creditor of the Respondent herein therefore, the said point is not applicable. ☐ 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.

8. The Applicant has placed on record the copy of the Guarantee Deed dated 09.12.2016 executed by the Personal Guarantor herein, in favour of the Applicant. It is submitted by the Applicant that it had issued a Guarantee invocation Notice No. IDBI/SWCPL/2018-19/46 dated 30.06.2018 and thereby, invoked the personal guarantee.

9. It is stated by the Applicant that it had issued notice dated 07.09.2019 to the Corporate Debtor, as well as to the Personal Guarantor herein under the provisions of Section 13(2) of SARFAESI Act 2002. It is added that the Accounts of the Corporate Debtor were declared as NPA w.e.f. 31.03.2018.

10. It is also submitted by the Applicant that the CIR process against the Corporate Debtor has already been initiated in the matter of Parsvnath Developers Limited Vs M/s. Savemax Wholesale Private Limited in CP. No. (IB)138/ND/2018 vide order dated 28.03.2018 and the said Corporate Debtor is under Liquidation process vide order dated 30.01.2019 of this Adjudicating Authority.

11. It is averred by the Applicant that it had sent and served the Demand Notice via Speed Post dated 28.09.2021 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 Smt. Seema Gupta, demanding payment of total outstanding amount of Rs. 15,19,84,972.42/. The tracking report in support of delivery of the Demand Notice has been placed at page no. 27 of the application.

12. The Applicant has also served the copy of this Application to the Respondent/Personal Guarantor vide email on 06.07.2022 and speed post on 06.10.2021 in compliance of the requirement under Section 95(5) of IBC,

2016. Vide order dated 20.07.2022, this Adjudicating Authority had issued limited notice to the Personal Guarantor/Respondent.

13. The Applicant has also placed on record the NeSL's Record of Financial Information to establish default made by the Personal Guarantor /Corporate Debtor, the scanned copy of which is reproduced below :



NATIONAL E-GOVERNANCE SERVICES LIMITED
राष्ट्रीय ई-गवर्नेंस सर्विसेज लिमिटेड

Record of Financial Information - Form C

Annexure A10

Unique Debt Identifier: AABCI8842G_7600655100000161
Submission ID: 4
Submitted by IDBI BANK
Information as on 01/09/2021

Submitter Information			
Name	IDBI BANK	UIN (PAN)	AABCI8842G
Relationship	creditor	Comm. Address PIN	110055
Billing / Comm. Address	IDBI Bank Ltd 1st Floor Jhndewalan Extension Delhi	Email ID - Dispute Alert	*****@idbi.co.in
Email ID - Default Alert	*****@idbi.co.in		

Other Party Details			
Debtor			
Name	SAVEMAX WHOLESALE CLUB PVT LTD	Relationship	debtor
Party Type	Indian Entity	Regd. / Permanent Address	401 D MALL NETAJI SUBHASH PLACE NEW DELHI DELHI
Regd. Address PIN	110034	Billing / Comm. Address	401 D MALL NETAJI SUBHASH PLACE NEW DELHI DELHI STATE
Comm. Address PIN	110034	Legal Constitution	PUBLIC LIMITED
CIN/LLPIN	U51109DL2007PTC169440	PAN / Other ID	AADCB2714N
Contact Person Name	Shri Vaibhav Singhal	Contact Person Designation	Promoter
Mobile No.	8178810687	Email ID	finance@savemax.in
Alternative Email ID	singhal.vaibhav24@gmail.com		

Guarantor 1			
Name	Shri Vaibhav Singhal	Relationship	guarantor
Party Type	Resident Individual	Regd. / Permanent Address	25 BY 75 SHAKTI NAGAR
Regd. Address PIN	110007	Legal Constitution	Individual
DOI / DOB	17/04/1990	PAN / Other ID	CDWPS3315K
Contact Person Name	Shri Vaibhav Singhal	Mobile No.	8178810687
Email ID	singhal.vaibhav24@gmail.com		

Guarantor 2			
Name	Smt Seema Gupta	Relationship	guarantor

Party Type	Resident Individual	Regd. / Permanent Address	25 BY 75 SHAKTI NAGAR
Regd. Address PIN	110007	Legal Constitution	Individual
DOI / DOB	02/02/1968	PAN / Other ID	AEUPG2843M
Mobile No.	8178810687	Email ID	singhal.vaibhav24@gmail.com

Debt Information			
Type of debt	financial	Debt Reference No.	7600655100000161
Creditor Location	DELHI	Debt Contract Date	22/09/2016
Debt Start Date	21/01/2017	Debt Currency	INR
Sanction Currency	INR	Sub Type - Debt	Credit Facility
Funded Type	Funded	Sanctioned Amount	75000000
Facility Name	CORP-CASH CREDIT	Repayment Frequency	on demand
Rate of Interest	11.95	Lending Arrangement	mba
Total Outstanding Amount	151984972.42	Amount Overdue	151984972.42
Principal Outstanding	73181470.96	Interest Outstanding	78104247.00
Other Chg Outstanding	699254.46	Days Overdue	650
Account Closed Flag	no		

Security Information			
Security 1			
Date of Security Interest Creation	23/01/2017	Type of Charge Created	Pledge
Assets Type	Movable	Description of Security	BOOK DEBTS UPTO 90 DAYS
Currency of Security	INR	Value of Security	1038432589.66
Date of Valuation	20/01/2017		

Security 2			
Date of Security Interest Creation	03/01/2018	Type of Charge Created	Mortgage
Assets Type	Immovable	Description of Security	LAND & BLDG. - COLLATERAL
Currency of Security	INR	Value of Security	121186000
Date of Valuation	12/11/2018		

Security 3			
Date of Security Interest Creation	23/01/2017	Type of Charge Created	Pledge
Assets Type	Movable	Description of Security	ALL MOVABLE STOCKS
Currency of Security	INR	Value of Security	685954376.06
Date of Valuation	20/01/2017		

Security 4			
Date of Security Interest Creation	09/12/2016	Type of Charge Created	Guarantee

Assets Type	Not Classified	Description of Security	Personal Guarantee executed by Shri Vaibhav Singhal
Currency of Security	INR		

Security 5			
Date of Security Interest Creation	09/12/2016	Type of Charge Created	Guarantee
Assets Type	Not Classified	Description of Security	Personal Guarantee executed by Smt Seema Gupta
Currency of Security	INR		

Default Details			
Date Of Default	31/03/2018	Default Amount	151984972.42
Total Outstanding Amount	151984972.42		

14. 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/Creditor and that is why it has preferred the present Application against the respondent.

15. 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 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.

16. The Applicant/Financial Creditor has proposed the name of Sh. Anil Kumar Mittal, having its registration no. IBBI/IPA-002/IP-N00742/2018-19/12263 and email id: mittalanil.ubi@gmail.com as Resolution Professional, who has accepted to be appointed and declared that he is eligible to be appointed as there are no disciplinary proceedings pending against him. **Therefore we, in exercise of the powers conferred under Section 97 of the IBC, 2016 on this Authority subject to the Regulation**

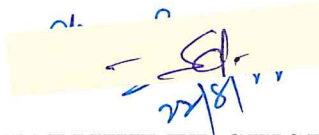
4 (1) and (2) of the Insolvency and bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, appoint Sh. Anil Kumar Mittal as the Resolution Professional in the present matter.

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

18. The Applicant/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 Sh. Anil Kumar Mittal immediately by all modes for information and compliance of the Order.

19. List the matter on 09.09.2022.


(L. N. GUPTA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)