



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

IA. NO. 6037/ND/2022
IN
Company Petition No. (IB)-411(ND)/2022

IN THE MATTER OF:

The Karur Vysya Bank Limited

... Applicant/ Creditor

Versus

Mr. Sourabh Goel

... Respondent/Personal Guarantor

AND IN THE MATTER OF IA. NO. 6037/ND/2022:

Mr. Paban Kumar Jain

210, Neelkanth Plaza,
15, Community Centre, Pitampura,
Road No. 44, North West,
NCT of Delhi - 110034

... Resolution Professional/Applicant

Order Delivered on: 12.06.2023

SECTION: Section 100 read with Sections 95 & 99 of IBC 2016

CORAM:

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

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

PRESENT:

For the Applicant : Adv. Kushal Bansal



ORDER

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

The present IA No. 6037 of 2022 has been filed by Mr. Paban Kumar Jain, Resolution Professional (hereinafter referred to as the **'Applicant/Resolution Professional**), enclosing therewith its report/recommendation regarding the initiation of the IR process against Mr. Sourabh Goel (hereinafter referred to as the **Respondent/Personal Guarantor**) under Section 99 of IBC, 2016.

2. To put the facts succinctly, the underlying main Petition CP (IB)-411/ND/2022 was filed by The Karur Vysya Bank Limited against the Personal Guarantor namely, Mr. Sourabh Goel under Section 95 of IBC, 2016, to initiate IR process. Vide order dated 06.09.2022, this Adjudicating Authority had appointed Mr. Paban Kumar Jain as a Resolution Professional (RP) of the Personal Guarantor and directed the Applicant/RP to file its report under Section 99 of IBC, 2016.

3. In compliance with the order dated 06.09.2022 passed by this Adjudicating Authority, the Applicant/RP vide present IA-6037/2022 has filed its Report under Section 99 of IBC, 2016, recommending admission of the application in respect of the Respondent/Personal Guarantor.

4. The Applicant/RP in its report has stated the following in support of its recommendation for admission of the Section 95 Application -



4.1 The Respondent/Personal Guarantor Mr. Sourabh Goel has committed a default in making the payment of the indebted amount of Rs.1,86,86,10,626.97/- to The Karur Vysya Bank Limited, Creditor for which he has given the personal guarantee for credit facility availed by M/s Mahesh Industries Private Limited (Corporate Debtor).

4.2 The loan facility was guaranteed by the Deed of Guarantee dated 21.08.2015 by the personal guarantors including Mr. Sourabh Goel. Further, the obligations of the Personal Guarantors are “jointly and severally” and independent of the Corporate Debtor’s obligations. Thus, the Personal Guarantor undertook to guarantee the obligations of the Corporate Debtor under the loan agreement.

4.3 The Karur Vysya Bank had invoked the guarantee by issuing a “Demand Notice dated 19.04.2017” under SARFAESI Act, 2002.

4.4 The Karur Vysya Bank has also issued a Statutory Demand Notice in Form B under Section 95(4) (b) of IBC, 2016 to the Respondent/ Personal Guarantor vide Speed post, which could not be served. Therefore, the applicant has made the publication of the notice by substituted service in newspapers namely “Jansatta” in Hindi and “Financial Express” in English on 14.05.2022.

5. It is further stated by the Applicant while verifying the debt outstanding to be received by the Creditor from Personal Guarantor, it was observed that the amount outstanding as of 19.04.2017 was different from the amount appearing in the statement of Accounts of Creditor. Hence the RP/Applicant requested the Bank for reconciliation of the amount.



6. In response to the same, the Creditor shared with the Applicant, the Revised Interest Calculation Sheet on 01.12.2022 along with the Statement of Account of Debts in the Books of the Creditor. As per the revised calculation sheet shared by the creditor, there is an outstanding balance of Rs 173,10,84,470.77/- as of 30.04.2022 which is in default. Based on this examination of the Interest Sheet and Statement of Account the debt in default is reduced from Rs.186,86,10,626.97/- to Rs.173,10,84,470.77/.

7. The RP/Applicant has further stated that it has made the following compliances in terms of Section 99 of IBC, 2016.

9. THAT THE RESOLUTION PROFESSIONAL HAS DONE THE COMPLIANCE OF TERMS OF SECTION 99 AS BELOW:-

PROVISIONS OF SECTION 99 OF THE CODE	COMPLIANCES
Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing- (a) evidence of electronic transfer of the	In compliance of Section 99(2) of the Code, the Resolution Professional has informed the Guarantor vide email dated 21.11.2022 and letter dated 23.11.2022 and reminder email dated 01.12.2022 about the initiation of the Insolvency Resolution Process and





<p>unpaid amount from the bank account of the debtor;</p> <p>(b) evidence of encashment of a cheque issued by the debtor; or</p> <p>(c) a signed acknowledgment by the creditor accepting receipt of dues.</p>	<p>requested to prove the repayment of debt claimed as unpaid by the Creditor.</p> <p>However it may kindly note that the letter sent was returned back on 26.11.2022 with the comment addressee not found.</p>
<p>Section 99(3) Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.</p>	<p>The Debt is not registered with the Information Utility.</p>
<p>Section 99(4) For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.</p>	<p>The Resolution Professional has sent the email dated 22.11.2022 to the Creditor and requested to provide information or data available with the creditor.</p>
<p>Section 99(5) The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.</p>	<p>The Resolution Professional submits that the Creditor has duly submitted the documents as sought within a period of seven days from the date of request.</p>
<p>Section 99(8) Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the</p>	<p>The Resolution professional submits that the debtor is not eligible for a fresh start under Chapter II.</p>





debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.	
Section 99 (9) The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	The Resolution Professional submits that, from the documents annexed to the captioned Application and what has been stated above, there is a debt which is payable by the Personal Guarantor, and that the Personal Guarantor and/ or the Corporate Debtor have failed/defaulted to pay the debt within 14 days of service of the Demand Notice.

8. Vide order dated 16.12.2022, this Adjudicating Authority had issued notice to the Respondent for filing Reply/Objections to the Report of the RP filed under Section 99 of IBC, 2016. However, no one represented the Respondent/Personal Guarantor. Accordingly, Respondent/Personal Guarantor was proceeded ex-parte vide order dated 24.01.2023

9. We heard the submissions of the Applicant and perused the Report received under Section 99 of IBC, 2016 by the Applicant/RP recommending admission of the Section 95 Application and initiation of the IR process against the Personal Guarantor. Since the Respondent/Personal Guarantor is proceeded ex-parte, therefore, it is presumed that it has nothing to say/respond to in the matter.



10. On perusal of the report, it is observed that the Respondent/Personal Guarantor had committed default in payment of the dues towards Karur Vysya Bank for whom it has given Guarantee on behalf of M/s Mahesh Industries Private Limited (the Corporate Debtor) vide guarantee deed dated 21.08.2015.

11. Further, the Creditor/Karur Vysya Bank has served the Demand Notice under Section 95(4)(b) to the Respondent/Personal Guarantor by substituted service through publication in the newspapers on 14.05.2022. The Creditor has also invoked the guarantee by issuing its notice dated 19.04.2017. Hence, there is sufficient material on record, which establishes the default committed by the Respondent/Personal Guarantor and we have no reason not to accept the recommendation of the Applicant/ Resolution Professional. **In view of the aforementioned, we accept the report of the RP filed by him under Section 99 of the IBC, 2016, and admit the CP (IB)-411/ND/2022 filed by the Creditor and accordingly, order initiation of the IR process in respect of Sh. Sourabh Goel, Respondent/Personal Guarantor with immediate effect.**

12. As a sequel of admission of the present application, a 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 the period of 180 days.

13. 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 Resolution Professional 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.

14. 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.



15. A copy of this order along with a copy of the application as also the report of the Resolution Professional shall be provided to the Creditor (Applicant), Respondent/Personal Guarantor, and IBBI, by the Registry/Court Master within 7 days from today by e-mail.

16. The present order shall remain subject to the order to be passed by the Hon'ble Supreme Court in W.P.C. No. 307/2022.

17. **IA 6037/ND/2022 is disposed of accordingly.** To come up for consideration of status report to be filed by RP, within 8 weeks.

Sd/-

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

Sd/-

**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**