



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

(IB)418(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. Sumit Goyal

S/o Mr. Chand Goyal
Resident of 450, First Floor,
Deepali, Pitampura,
New Delhi – 110034

...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 : Adv. Rajat Srivastava, Adv. Amit Dhall



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. Sumit Goyal (hereinafter, referred to as **Personal Guarantor/Debtor**), who is the Guarantor of M/s. Azad Impex Private Limited and M/s Giriraj Timber Private Limited **(the 'Corporate Debtors')**.

2. It is submitted by the Applicant that on 10.03.2015 and 12.06.2015, the Guarantee Deeds/Agreements were executed and signed by Mr. Sumit Goyal, thereby guaranteeing the loan granted to M/s. Azad Impex Private Limited and M/s Giriraj Timber Private Limited respectively under the agreements of guarantees. 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 added by the Applicant that the loan accounts of the Corporate Debtors M/s. Azad Impex Private Limited and M/s Giriraj Timber Private Limited became Non-Performing Asset (NPA) on 13.02.2019.



4. That the Applicant has filed detailed particulars of the transaction in Part III of its Application, pursuant to which it has claimed a total debt of Rs. 65,41,34,079.89/- in respect of M/s. Azad Impex Private Limited and total debt of Rs. 67,34,89,906.02/- in respect of M/s Giriraj Timber Private Limited. The Part III in of the Application is reproduced below:

Part – III

PARTICULARS OF DEBT		
1.	Total outstanding debt (including any interest or penalties)	I. M/s Azad Impex Pvt Ltd. Rs.65,41,34,079.89/- (Rupees Sixty Five Crores Forty One Lacs Thirty Four Thousands Seventy Nine and Paise Eighty Nine only) as on 30.04.2022 with interest and expenses thereon from 01/05/2022 II. M/s Giriraj Timbers Pvt Ltd Rs.67,34,89,906.02 (Rupees Sixty Seven Crores Thirty Four Lakhs Eighty Nine Thousands Nine Hundred Six and paise Two Only) as on 30.04.2022 with interest and expenses thereon from 01/05/2022
2.	Amount of debt in default	I. M/s Azad Impex Pvt Ltd. Rs.65,41,34,079.89/- (Rupees Sixty Five Crores Forty One Lacs Thirty Four Thousands Seventy Nine and Paise Eighty Nine only) as on 30.04.2022 with interest and expenses thereon from 01/05/2022 II. M/s Giriraj Timbers Pvt Ltd Rs.67,34,89,906.02 (Rupees Sixty Seven Crores Thirty Four Lakhs Eighty Nine Thousands Nine Hundred Six and paise Two Only) as on 30.04.2022 with interest and expenses thereon from 01/05/2022
3.	Date when the debt was due	I. M/s Azad Impex Pvt Ltd. 20.02.2019 (Date of Notice under 13(2)) & admission of Liability on 23.02.2021 II. M/s Giriraj Timbers Pvt Ltd 20.02.2019 (Date of notice under section 13(2)) & Date of admission of liability on 23.02.2021.
4.	Date when the default occurred	I. M/s Azad Impex Pvt Ltd.



			20.02.2019 II. M/s Giriraj Timbers Pvt Ltd 20.02.2019				
5.	Nature of the debt	I. Azad Impex Pvt Ltd	<table><tr><td>Nature of Debt</td><td>Outstanding as on 30.04.2022</td></tr><tr><td>Working Capital Limit</td><td>Rs.65,41,34,079.89/-</td></tr></table>	Nature of Debt	Outstanding as on 30.04.2022	Working Capital Limit	Rs.65,41,34,079.89/-
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		II. M/s Giriraj Timbers Pvt Ltd	<table><tr><td>Nature of Debt</td><td>Outstanding as on 30.04.2022</td></tr><tr><td>Working Capital Limit</td><td>Rs.67,34,89,906.02</td></tr></table>	Nature of Debt	Outstanding as on 30.04.2022	Working Capital Limit	Rs.67,34,89,906.02
Nature of Debt	Outstanding as on 30.04.2022						
Working Capital Limit	Rs.67,34,89,906.02						
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		I. M/s Azad Impex Pvt Ltd. <u>Primary:</u> Hypothecation of Entire current assets of the company, including stock and receivables age not older than 90 Days. <u>Collateral:</u> - Commercial property comprising land measuring 435 sq yards, out of Khasra numbers :73/11/1(0-08) ,11/2(0-02) in revenue estate of Mundka, Delhi – 41,Standing in the name of Mrs. Renu Aggarwal W/o- Mr. Sumit Goyal valued at Rs. 3.40 Cr as on 22.02.2021 - Commercial property (area 1250 sq yards) comprising single storey building situated at 73/19/2(1-05) and 73/22/1(3-08), Mundka,Swarn park, standing in the name of Mrs. Suman Rani W/o Mr. Anil Kumar Goyal valued at Rs. 9.31 Cr as on 22.02.2021 - Property comprising of following three contiguous immovable properties (factory land and building) comprised in revenue survey No. 347 Paiki, - Land admeasuring acre 2.16 guntha(9712.80 sq mtrs)(being the remaining portion of survey No. 347 ie. Other than plot no 1 and 2), - Plot No.1 admeasuring 19680 sq mtrs - Plot No.2 admeasuring 15606.50 sq mtrs. Situated at village Nani Chirai, Taluka Bhachau, Distt. Kutch, Gujarat, Standing in the name of Mr. Anil Kumar Goyal S/o mr. Prem Sagar Goyal valued at Rs.15.26 Cr as on 03.12.2020 II. M/s Giriraj Timbers Pvt Ltd <u>Primary:</u> Hypothecation of entire current assets of the Company present & future including stocks and receivables age not older then 90 days. Book Debts due from sister/Group				



		Concern are also to be excluded for arriving at DP. Book Debts of age of more than 90 Number of Days shall not be taken in to account for arriving at DP under OCC. <u>Collateral:</u> ➤ Commercial godown on plot of Khasra no. 73/10/2(0-01);73/10/3(0-12);73/11/2(0-10), Village Mundka, Delhi admeasuring an area about 1050 sq yards standing in the name of Mrs.Shanta Goyal W/o-Mr. Pradeep Goyal valued at Rs.7.57Cr as on 22.02.2021 ➤ Industrial land with sheds situated at revenue survey no. 296/1, village Mithirohar,National Highway 8-A, Taluka - Gandhidham, Distt. Kutch, Gujarat, admeasuring an area about 20537 sq Mts. standing in the name of Mrs.Suman Goyal W/o- Mr. Anil Goyal & Mrs.Veena Rani W/o-Mr. Chand Kumar Goyal valued at Rs. 19.91 Cr as on 03.12.2020
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)	Debt has become due under the provisions of the contract act in term of the documents annexed as annexure. I. M/s Azad Impex Pvt Ltd. The limitation starts from 20.02.2019 from the date of notice under section 13(2) II. M/s Giriraj Timbers Pvt Ltd The limitation starts from 20.02.2019 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 for both the company	I. M/s Azad Impex Pvt Ltd. II. Notice under Section 13(2)



part) –	
Name of corporate debtor for which guarantee is given	I. M/s Azad Impex Pvt Ltd. II. M/s Giriraj Timbers Pvt Ltd
Any current or past position held in the corporate debtor (to the extent known)	I. Guarantor in M/s Azad Impex Pvt Ltd II. Director in M/s Giriraj Timbers Pvt Ltd
Identification number of the corporate debtor	I. M/s Azad Impex Pvt Ltd. CIN - U51101DL2007PTC164290 II. M/s Giriraj Timbers Pvt Ltd CIN - U20299DL2003PTC122162
Whether corporate debtor is an associate (to the extent known)	NOT KNOWN
Any securities held in corporate debtor for whom guarantee is given	I. M/s Azad Impex Pvt Ltd. <u>Primary:</u> Hypothecation of Entire current assets of the company, including stock and receivables age not older than 90 Days. <u>Collateral:</u> - Commercial property comprising land measuring 435 sq yards, out of Khasra numbers :73/11/1(0-08) ,11/2(0-02) in revenue estate of Mundka, Delhi – 41, Standing in the name of Mrs. Renu Aggarwal W/o- Mr. Sumit Goyal valued at Rs. 3.40 Cr as on 22.02.2021 - Commercial property (area 1250 sq yards) comprising single storey building situated at 73/19/2(1-05) and 73/22/1(3-08), Mundka, Swarn park, standing in the name of Mrs. Suman Rani W/o Mr. Anil Kumar Goyal valued at Rs. 9.31 Cr as on 22.02.2021 - Property comprising of following three contiguous immovable properties (factory land and building) comprised in revenue survey No. 347 Paiki, - Land admeasuring acre 2.16 guntha(9712.80 sq mtrs)(being the remaining portion of survey No. 347 ie. Other than plot no 1 and 2), - Plot No.1 admeasuring 19680 sq mtrs - Plot No.2 admeasuring 15606.50 sq mtrs. Situating at village Nani Chirai, Taluka Bhachau, Distt. Kutch, Gujarat, Standing in the name of Mr. Anil Kumar Goyal S/o mr. Prem Sagar Goyal valued at Rs.15.26 Cr as on 03.12.2020 II. M/s Giriraj Timbers Pvt Ltd <u>Primary:</u> Hypothecation of entire current assets of the Company present & future including stocks and receivables age not older then 90 days. Book Debts due from sister/Group Concern are also to be excluded for arriving at DP. Book Debts of age of more than 90 Number of Days shall not be taken in to account for arriving at DP



	I. M/s Azad Impex Pvt Ltd. II. M/s Giriraj Timbers Pvt Ltd	III. OTS offer letter IV. Account Statement V. Personal Guarantee Agreement VI. M/s Giriraj Timbers Pvt Ltd 1. Notice under Section 13(2) 2. OTS offer letter 3. Account Statement 4. Personal Guarantee Agreement
16	Statement by creditor in respect of excluded debts	I/We 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- • 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 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.

For The Karur Vysya Bank

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



5. It is averred by the Applicant that it had invoked the aforesaid Guarantees vide its notices dated 20.02.2019 in respect of M/s. Azad Impex Private Limited and M/s. Giriraj Timber 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 Notices via Speed Post dated 07.04.2022 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. It has been added that the Demand Notices were served by Speed Post on 09.04.2022 and the tracking report is annexed at page no. 16 and 42 of the application in respect of M/s. Azad Impex Private Limited and M/s Giriraj Timber Private Limited respectively.

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

8. It is 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. Rajesh Mittal IP having its registration no. IBBI/IPA-001/IP-P01114/2018-19/11816, and email id md@alamakcapital.com 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.

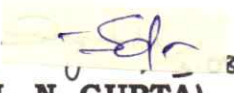
12. The Resolution Professional Mr. Rajesh Mittal shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 read with the Rules made there under. **He is directed to examine the Application and make recommendations along with the reasons in writing for acceptance or rejection of this Application, within the stipulated**

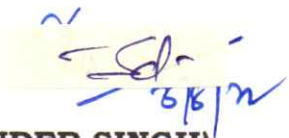


time as envisaged under the provisions of Section 99 of the IBC, 2016. The RP shall give a copy of the report under Section 99(7) to the Applicant/Creditor as soon as the same is filed before this Adjudicating Authority.

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.


(L. N. GUPTA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)