

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

Item No. 206
IB-412/ND/2022
IA-1924/2023

IN THE MATTER OF:

Karur Vysya Bank ... **Applicant/Petitioner**

Versus

Mr. Ashok Mittal ... **Respondent**

AND IN THE MATTER OF IA-1924/2023:

Anoop Prakash Awasthi
(Resolution Professional)
C-6, IInd Floor, Rajouri Garden,
New Delhi, 110027

... **Applicant**

Under Section: 95 of IBC, 2016

Order delivered on 08.07.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant :

For the Respondent :

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IB-412/ND/2022, IA-1924/2023: The Karur Vyasya Bank i.e. Creditor preferred the petition under Section 95 of IBC, 2016, enclosing therewith the Dead of Guarantee dated 21.08.2015 executed by the Applicant, taking responsibility to repay the amount of Financial Facility extended by the Bank to the Personal Guarantor. The Part-III of the application filed under Section 95 of IBC, 2016 contained the details of the amount of debt in default and the date of default i.e. 19.04.2017. The Part-III reads thus:

PARTICULARS OF DEBT						
1.	Total outstanding debt (including any interest or penalties)	Rs.186,86,10,626.97/- (Rupees One Hundred Eighty Six Crores Eighty Six Lacs Ten thousand Six hundred Twenty Six & Paise Ninety Seven Only) with monthly compounded interest of 12.55% p.a. with additional 3.00% p.a. penalty Interest till 30.04.2022.				
2.	Amount of debt in default	Rs.186,86,10,626.97/- (Rupees One Hundred Eighty Six Crores Eighty Six Lacs Ten thousand Six hundred Twenty Six & Paise Ninety Seven Only) with monthly compounded interest of 12.55% p.a. with additional 3.00% p.a. penalty Interest till 30.04.2022 + Interest there upon from 01.05.2022				
3.	Date when the debt was due	19.04.2017 (Date of Notice 13(2))				
4.	Date when the default occurred	19.04.2017				
5.	Nature of the debt	<table border="1"> <thead> <tr> <th>Nature of Debt</th> <th>Outstanding as on 30.04.2022</th> </tr> </thead> <tbody> <tr> <td>Working Capital Limit</td> <td>Rs.186,86,10,626.97/-</td> </tr> </tbody> </table>	Nature of Debt	Outstanding as on 30.04.2022	Working Capital Limit	Rs.186,86,10,626.97/-
Nature of Debt	Outstanding as on 30.04.2022					
Working Capital Limit	Rs.186,86,10,626.97/-					
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	<p><u>Primary:</u> Hypothecation of Entire current assets of the company, including stock and receivables age not older than 90 Days.</p> <p><u>Collateral:</u></p> <ul style="list-style-type: none"> > Land for Godown purpose/Commercial Property bearing Revenue Survey No. 22/1, Area Acre 10-34 Guntha (43,901 sq. meters) Village: Varsana, Tal: Anjar, Dist: Kutch (Gujarat) standing in the name of M/s Mahesh Industries. > Industrial Sheds/Land and Building measuring approximately 9,712 sq.mts situated at survey no. 22/2, paiki 1 paiki 1 (old revenue survey no. 13) Ahmadabad National Highway, Near Kiran Petro Pump, Village Varsana, Tal:Anjar, District Kutch (Gujarat) standing in the name of M/s Mahesh Industries Pvt Ltd. 				
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. The limitation starts from 19.04.2017 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	1. Notice Under 13(2) 2. Personal Guarantee Agreement				

	the amount in default	3. Calculation Sheet/Statement of Account along with certificate under banker's book of evidence.
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- <ul style="list-style-type: none"> • 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

2. The petition was admitted in terms of the order dated 06.09.2022 passed by this Tribunal. Mr. Suresh Jindal was appointed as the RP, who could not continue with the Insolvency Resolution Process. Thus, Mr. Anoop Prakash Awasthi was appointed as RP. Mr. Anoop Prakash Awasthi discharged his functions as RP, in terms of the provisions of Section 99 of IBC, 2016, and filed his report by way of the IA-1924/2023.

3. In Part A of the Report, he gave the background of the case including the dates of notices sent by him to the Personal Guarantor. The Part-A reads thus:

- 1.1. In the captioned matter, as per the information available in the documents shared by the Applicant M/s Karur Vyasa Bank, Mr. Ashok Kumar Mittal (referred as Ashok Mittal in the subject case), is a personal guarantor to the credit facilities granted to M/s Mahesh Industries Ltd. to the extent of 186,86,10,626.97/- (Rupees One Hundred Eighty Six Crore Eighty Six Lakh Ten Thousand Six Hundred Twenty Six and Paise Ninety Seven Only) in terms of Demand Notice dated 09/05/2022 as on 30/04/2022.
- 1.2. Subject Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 was filed on 27/05/2022 before this Hon'ble Tribunal, however there is no information available if any Corporate Insolvency Case is going on against M/s Mahesh Industries Ltd. for which Mr. Ashok Kumar Mittal stood a personal guarantor.
- 1.3. That on 06/09/2022 this Hon'ble Tribunal was pleased to appoint Mr. Suresh Jindal, Insolvency Professional, Registration No. IBB/IPA-001/IP/P01709/2019-2020/12619 as the Resolution Professional in the matter to examine the application and file a report under the provisions of section 99 of Insolvency and Bankruptcy Code, 2016, however upon his application for the change of RP on health grounds, on 16/01/2023, undersigned was appointed as RP from the empanelment list available with this Hon'ble Tribunal. Said order of appointment was sent to the RP on 24/01/2023 and the steps taken thereafter are given in a chronological order as follows:-

24/01/2023 RP received the order dated 16/01/2023 passed by this Hon'ble NCLT in IA 6090/2022 in the matter of IB/412/ND/2022, Karur Vyasa Bank Vs Ashok Mittal via email sent by the staff attached to this Tribunal.

26/01/2023 RP sent an email to Mr. Suresh Jindal, the erstwhile RP to provide all the necessary papers of the proceedings against acknowledgement by 27/01/2023. Said email was sent with scanned copy of the order dated 16/01/2023.

27/01/2023 RP received email from Mr. Suresh Jindal mentioning that he is not handling the matter IB/412/ND/2022, Karur Vyasa Bank Vs Ashok Mittal, and thus was not having any documents, but, he sent the papers which were received by him from Karur Vyasa Bank.

30/01/2023 In reply to email sent to Karur Vyasa Bank, RP received mail from Mr. Kundan Singh, manager ARMB of Karur Vysya Bank Vs Ashok Mittal wherein he provided the copu of the petition filed by the bank for personal insolvency of Mr. Ashok Mittal. However, there was no substantial material available on record.

10/02/2023 RP issued notice to Mr. Ashok Mittal, informing him of his appointment of Resolution professional for his Personal Insolvency and sought for information regarding any repayment to the bank for the purpose of filing the report before Hon'ble NCLT, New Delhi. In the attachment to the email, copy of the petition filed by Karur Vyasa Bank and order dated 16/01/2023 were shared. Simultaneously Speed Post was also sent. RP called on Mobile No. 9017445000 and 9315839938 as available in record however despite calling several times on various days, phones were never attended and no email was replied even as on 25/03/2023.

26/02/2023 RP sent email to Mr. Ashok Mittal, the Personal Guarantor and Mr. Kundan Singh, Manager in the Asset Recovery Management Branch of the Karur Vyasa Bank, for response on the issue, however there was no response from the Personal Guarantor.

04/03/2023 RP spoke to and also sent email to Mr. Kundan Singh to know the response of the bank on the issues and requested them to provide with information about the net worth of Ashok Mittal at the time of executing the guarantee etc.

09/03/2023 RP spoke to and also sent an email to Mr. Kundan Singh to furnish the necessary information by 13/03/2023 to enable the RP to submit the report.

22/03/2023 Several rounds of discussion happened and it transpired that Mr. Ashok Mittal is not traceable.

The Bank on 22/03/2023 provided some more documents in the nature of statement of account and the customer details, Income Tax Details of Mr. Ashok Mittal therein certain assets were mentioned.

24/03/2023 An email was sent by the RP to Karur Vyasa Bank:

"In the course of preparation of RP report, I would like to request the following information:-

(i) Details of any Insolvency proceedings, initiated or pending or disposed against the CD M/s Mahesh Industries P Ltd. to which Mr. Ashok Mittal is a Personal Guarantor.

(ii) Status of the assets of the personal assets of Mr. Ashok Mittal as given in the attachment and marked in Red"

In reply to said mail following was informed by the Bank:

"Sir,

In reference to the trail mail, we hereby inform you the following details:

1. No insolvency proceedings initiated against the CD M/s Mahesh Industries P Ltd.

2. The assets which are tagged in red were not mortgaged to our bank."

28/03/2023 As the emails/speed post sent by the Resolution Professional, Anoop Prakash Awasthi to Mr. Ashok Mittal were not replied to and none of the phone calls made to him were answered and it was also confirmed by local enquiry that Mr. Mittal is not available/traceable. The postal receipt was not traceable at the time of preparation of report as such by way of abundant caution, the case papers, orders, a covering notice has been again sent via speed post to the Personal Guarantor/Mr. Ashok Mittal on 28/03/2023 requesting him to respond on the issue of his personal insolvency. Said speed post packet has been delivered however, there is no response.

31.03.2023 As the status is ascertained. Subject report is being filed.

4. As can be seen from the discussion and conclusion arrived at by the RP as mentioned in para 1 to 16 of the Report, particularly, para 5.10 thereof, the Personal Guarantor could not adduce any evidence in terms of the provisions of Section 99(2) of IBC to prove the repayment of debt. The paras 5.10 and 5.11 of the Report reads thus:

5.10. That it is stated herein that in accordance with the provisions of section 99(2) of the Code of 2016, the Resolution Professional herein has asked the Personal Guarantor to prove repayment of the debt claimed as unpaid by the creditor by furnishing –

- (a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;
- (b) evidence of encashment of a cheque issued by the debtor;
- or
- (c) a signed acknowledgment by the creditor accepting receipt of dues.



However, no response has been received by RP till the filing of this report. It is evident that the debt remains unpaid till the filing of this report.

5.11. That as per Section 99 (7) and 99 (9) of the code, the RP has duly examined the application filed by the Financial Creditor against the Personal Guarantor under Section 95 of IB Code and concludes:-

- a. The application is complete in all contexts and satisfies the requirements set out under Section 95(4) of IBC.
- b. The applicant/ Financial Creditor was able to satisfy the Resolution Professional in respect of his various queries specifically in relation to any payment received after delivery of demand notice.
- c. The Personal Guarantor has failed to produce any proof of repayment, hence debt is due & Payable.

5. Finally, the RP recommended admission of the application. The recommendation made by him is reproduced herein below.

F. RECOMMENDATION

That in view of the above-mentioned facts, circumstances and grounds, the Resolution Professional by way of this report most respectfully recommends to the Hon'ble Adjudicating Authority for admission of the Application bearing IB NO. 412/(ND)/2022 filed by the Applicant / Financial Creditor herein under Section 95 of the IBC, 2016.

6. As can be seen from the provisions of Section 95(4) of IBC, 2016, while considering an application filed under Section 95 of IBC, 2016, this Tribunal needs to satisfy itself as to whether there are documents available on record to arrive at the conclusion that the Personal Guarantor has liability to repay the amount of debt, he failed to repay the same and has committed the default. In the present case, the Personal Guarantor executed the Deed of Guarantee Dated 21.08.2015, taking responsibility to repay the amount of debt. The relevant excerpt of the Deed (Annexure A-5) reads thus:

AGREEMENT OF GUARANTEE (Single & Joint)

This deed of agreement of guarantee executed at Karnal on this 21st day of August 2015 by:

1. Mr. Ashok Kumar Mittal, S/o Late Rati Ram Mittal, aged about 52 years, R/o H No 2143, Sector 13, Urban Estate, Karnal 132001
2. Mr. Sourabh Goel, s/o Mr. Sushil Goel, aged about 23 years, residing at H-2/12, Sector-11, Rohini, Delhi

3. Mrs. Seema Mittal, W/o Shri. Bharat Mittal, aged about 42 years, R/o H. No- 205, Sector-13, Urban Estate, Karnal
4. Mr. Babu Ram Singla, S/o Moluram Singla, aged about 56 years, R/o 38, Dayanand Vihar, Delhi
5. Mr. Himanshu Gupta aged about 40 years, R/o A-68, Priyadarshini Vihar, Delhi 110092
6. Mr. Sudhanshu Gupta, s/o Mr. Darshan Lal Gupta, aged about 43 years, R/o NO A-68, Priyadarshini Vihar, Delhi
7. Mr. Harish Singla, s/o Mr. Babu Ram Singla, aged about 37 years, residing at B-40, Madhu Vihar, I.P Extension, Karkar Dooma, Trilok Puri, Delhi
8. Mrs. Sucheta Singla, w/o Mr. Harish Singla, aged about 35 years, residing at 38, Dayanand Vihar, Delhi

hereinafter called the "Guarantors" which term shall mean and include their heirs, legal representatives, executors, administrators and assigns, in favour of The Karur Vysya Bank Limited, a Banking Company incorporated under the provisions of Indian Companies Act, 1913 carrying on the business of Banking and having its Head Office at Erode Road, Karur - 639 002, hereinafter called the "Bank", which term shall mean and include its successors and assigns:

1. In consideration of the Bank allowing/continuing/enhancing at the request of the Guarantor/s, the following banking facilities:

S.No.	Nature of Facility	Amount
1.	OCC (Enhanced from Rs. 12.00 Crores) - Karnal Branch	Rs. 14.50 Crores
	OCC- Gandhidham Branch	Rs. 0.50 Crores
2.	FLC (Enhanced from Rs. 60.00 Crores)	Rs. 80.00 Crores
Sublimit under FLC		
2.1	Buyers Credit (Enhanced from Rs. 60.00 Crores)	(Rs. 80.00 Crores)
3.	CEL Limit (Reduced From Rs. 7.50 Crores)	Rs. 2.50 Crores
	(Notional Principal Limit of Rs. 20.00 Crores)	

to the borrower M/s Mahesh Industries Private Limited (CIN No: U20232DL2007PTC171159), Registered office at: 74/24, Swarn Park, Mundka, Rohtak Road, Nangloi, Delhi, Business place at: Timber market, Sadar Bazar, Karnal 132001 at its Karnal Branch, Haryana on the terms and conditions contained in loan documents dated 21.08.2015 the guarantor/s hereby agree with the Bank as under:

2. The Guarantors hereby guarantee jointly and severally to pay the bank on demand all principal, interest, costs, charges and expenses due and which may at any time become due to the Bank from the Borrowers, on the accounts opened in respect of the said limits (hereinafter called the "said account") down to the date of payment and also all loss or damages, costs, charges and expenses and in the case of legal costs, costs as between attorney and client occasioned to the Bank by reason of omission, failure or default temporary or otherwise in such payment by the Borrower or by the Guarantors or any of them including costs (as aforesaid) of enforcement or attempted enforcement of payment by suit or otherwise or by sale or realization or attempted sale or realization of any security for the said indebtedness or otherwise howsoever or any costs (which costs to be as aforesaid) charges or expenses which the Bank may incur by being joined in any proceeding to which the Bank may be made or may make itself party either with or without others in connection with any such securities or any proceeds thereof.
3. The Guarantors hereby declare that this guarantee shall be continuing guarantee and shall not be considered as cancelled or in any way affected by the fact that at any time the said accounts may show no liability against the Borrower or may even show a credit in his favour but shall continue to be a guarantee and remain in operation in respect of all subsequent transactions.
4. The Guarantors hereby consent to the Bank making any variance that it may think fit in the terms of the contract with the Borrower, to the Bank accepting additional or collateral security or any kind determining, enlarging or varying any credit to him or making any composition with him or promising to give him time or not to sue him and to the Bank parting with any security it may hold for the guaranteed debt. The Guarantors jointly and severally agree that they shall not be discharged from their liability by the Bank releasing the Borrower or by any act or omission of the Bank the legal consequence of which may be to discharge the Borrower or by any act of the Bank which would, but for this present provision, be inconsistent with their rights as guarantors or by the Bank's omission to do any act which but for this present provision, the Bank's duty to the Guarantors would have required the Bank to do. Though as between the Borrower and the Guarantors they are guarantors only, the guarantors agree that as between the Bank and the guarantors they are debtors jointly with the Borrower and accordingly they shall not be entitled to claim the benefit or legal consequence of any variation in the terms of the contract and to any of the rights conferred on a guarantor by Section 133, 134, 135, 139 & 141 of the Indian Contract Act.
5. The guarantors hereby consent to the Bank renewing from time to time the following limits:

S.No.	Nature of Facility	Amount
1.	OCC (Enhanced from Rs. 12.00 Crores)- Karnal Branch	Rs. 14.50 Crores
	OCC- Gandhidham Branch	Rs. 0.50 Crores
2.	FLC (Enhanced from Rs. 60.00 Crores)	Rs. 80.00 Crores
Sublimit under FLC		
2.1	Buyers Credit (Enhanced from Rs. 60.00 Crores)	(Rs. 80.00 Crores)
3.	CEL Limit (Reduced From Rs. 7.50 Crores)	Rs. 2.50 Crores
	(Notional Principal Limit of Rs. 20.00 Crores)	

allowed to the borrower, obtaining fresh documents from him, closing the existing accounts, opening new accounts, or transferring the same or part thereof to any branch of the Bank. Notwithstanding this, the Guarantors agree and declare that they shall remain liable to the Bank for any indebtedness of the Borrower under the renewed limit and the terms and conditions of the deed shall apply and govern their liability under the renewed limit.

7. Despite, the notice served upon it under Section 13(2) of the SARFAESI Act, 2002 issued by the Creditor recalling the Guarantee, the Respondent i.e.,

Personal Guarantor did not repay the amount of debt. The relevant excerpt of the Recall Notice reads thus:

In the circumstances mentioned above, we hereby call upon you to pay us the aforesaid sum of Rs.92,41,11,057.49 (Rupees Ninety Two Crores Forty One Lacs Eleven Thousands Fifty Seven and Paise Forty Nine only) together with further interest jointly and severally within 60 days from the date of this notice failing which we will be constrained to take appropriate action against you enforcing the security in terms of the provisions of the Securitization And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002.

8. The demand notice issued by the Creditor to Personal Guarantor on 09.05.2022 is enclosed as Annexure 1 to the petition filed under Section 95 of IBC, 2016.

9. As despite, recall notice as also demand notice the Respondent did not care to repay the amount of debt, apparently there is sufficient material to indicate that he failed to discharge his liability to repay the amount of debt. From the Report of the RP, it is clear that the Respondent could not adduce any evidence in terms of provisions of Section 99(2) of IBC, 2016 to prove the repayment of the debt and has defaulted to repay the same. From the report of the RP, it is clear that he has discharged his function in terms of the provisions of Section 99 of IBC, 2016.

10. Though, the Personal Guarantor did not care to defend the present proceedings instituted qua him and in terms of the order dated 20.11.2023, the proceeding qua him were set ex-parte, but to ensure the satisfaction of the requirement of the law, we specifically asked the Ld. Counsel appearing for the RP to show as to how the present petition could be treated within the period of limitation.

11. Since in terms of the Deed of Guarantee, the Respondent committed that his liability to repay the debt is continuous one and he could not produce any evidence before the RP to prove that the amount of debt could be acknowledged by the Principal Borrower, we are left with no option, but to form an opinion that the application is not barred by limitation.

12. In view of the aforementioned, **we accept the report of the RP, and admit the application and order of commencement of IRP qua the Personal Guarantor. Ordered Accordingly.**

13. It goes without saying that during the Insolvency Resolution Process, the RP shall give an opportunity to personal guarantor to submit her repayment plan. Nevertheless, before that the RP shall also carry the exercise in terms of the provisions of Section 100(2) of IBC 2016. For such purpose it would be open to the Respondents to appear before RP within 1 week from today.

14. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. 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 debtors 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 period of 180 days.

15. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim 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 notice shall be – (a) published in two National Newspapers, one in English and other one Vernacular Language, 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.

16. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 102, 103, 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of 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 discharge of his duties as RP.

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

18. **IA-1924/2023 stands disposed of. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

It goes without saying that whatever amount is paid to the creditor by the principal borrower (corporate debtor) and other guarantors would be deducted from the liability of the Respondent to repay.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)