

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

(IB)336(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

Shri. Heavent Sudhir Malhotra

S/o Shri. Sudhir Malhotra
C-4/51, Safdarjung Development Area
New Delhi – 110016

...Personal Guarantor/Respondent

Order Delivered on: 04.08.2022

SECTION: 95(1) of IBC 2016

CORAM:

SHRI. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SHRI. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

: Adv. Vijay Kumar, Adv. Rekha Anand

For the Respondent

**: Adv. Abhishek Anand, Adv. Vishal Hinawat,
Adv. Pathik Chaudhary**

ORDER

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

The present Application has been filed by Karur Vysya Bank Ltd. **(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 Shri. Heavent Sudhir Malhotra (hereinafter, referred to as **Personal Guarantor/Debtor**), who is the Guarantor of M/s Xalta Food and Beverages Private Limited **(the ‘Corporate Debtor’)**.

2. It is submitted by the Applicant that on 04.05.2017, the Guarantee Deed was executed and signed by the Personal Guarantor/Respondent Sh. Heavent Sudhir Malhotra, thereby guaranteeing the loan granted to M/s Xalta Food and Beverages Pvt. Ltd. under the Common Loan Agreement dated 04.05.2017. The Applicant has placed on record a copy of the said Guarantee Deed executed by the Personal Guarantor in favour of the Applicant Bank.

3. It is further added by the Applicant that the loan account of the Corporate Debtor became Non-Performing Asset (NPA) on 30.12.2018.

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.14,91,62,709.79/-. The Part III of the Application is reproduced overleaf :

PARTICULARS OF DEBT			
1.	Total outstanding debt (including any interest or penalties)	Rs 14,91,62,709.79 on 31.05.2021 + Interest thereupon from 01.06.2021	
2.	Amount of debt in default	Rs 14,91,62,709.79 (Rupees Fourteen Crores Ninety one lakhs Sixty Two thousand Seven hundred Nine & Seventy Nine only) + Interest thereupon from 01.06.2021	
3.	Date when the debt was due	30.12.2018	
4.	Date when the default occurred	Continuing Guarantee recalled on 13.03.2019	
5.	Nature of the debt	Nature of Debt	Outstanding as on 31.05.2021
		Term Loans	14,91,62,709.79
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 : Primary: Term Loan: First Pari-passu charge over the Fixed Assets (machineries & utilities) purchased pertaining to the project (ie. For setting up of 1350BPM -Bottle per Minute in the Carbonated Fruit Drink and Fruit Juices line in the existing premises at Khasraa No.509 Village ChhejarsiKuleech Nagar, Tehsil Dhalulana, Dist-Hapur UP. The estimated total value of Rs.55.70 crore (including machineries of Rs.49.98 Crs. and Utilities of Rs.5.72 Crs.) The above securities shall be shared on pari-passu basis among the lenders participating in phase-II expansion with total term loan of Rs.45.00 crore. ILC/FLC: Hypothecation of goods received under LC Collateral Security : Term Loan /ILC/FLC: 1)First pari-passu Charge on Freehold land admeasuring 13.79 acres situated on the State Highway, Sanand Bavla Road, Ahmedabad Standing in the name of M/s Xalta Infrastructure Pvt. Ltd. The approximate Market value as per valuation is Rs.23.29 crore. (In process of sale by consortium Lead bank i.e Indian Bank ,SAM Large Branch Delhi) Applicant Bank Share 25%	
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. Common Loan agreement dated 04.05.2017 2. Letter of Authority to lead bank dated 04.05.2017 3. Inter creditor agreement and confirmation of borrower to ICA dated 04.05.2017 4. Deed of hypothecation dated 04.05.2017 5. Escrow Account agreement dated 04.05.2017 6. Personal Guarantee by Ms. Homi dated 04.05.2017 7. Personal Guarantee by Ms. Pooja Malhotra dated 04.05.2017 8. Personal Guarantee by Mr. Heavent Sudhir Malhotra dated 04.05.2017 9. Personal Guarantee by Mr. Vishnoo Mittal dated 04.05.2017 10. Personal Guarantee by Mr. Vinod Sehvasg dated 08.05.2017 11. Undertaking cum Indemnity dated 04.05.2017 12. Corporate Guarantee by M/s- Xalta Infrastructure & Services Private Limited 13. Corporate Guarantee by M/s- VHV Beverages Private Limited 14. Corporate Guarantee by M/s- V & V Corporation Private Limited 15. Board Resolutions of M/s- Xalta Food & Beverages Private Limited dated 24.03.2017 16. Board Resolution of M/s- V & V Corporation Private Limited dated 22.03.2017 & 24.03.2017 17. Board Resolution of M/s- VHV Beverages Private Limited dated 17.03.2017 & 24.03.2017 18. Board Resolution of M/s- Xalta Infrastructure & Services Private Limited dated 20.03.2017 & 24.03.2017 19. KYC of Directors, Personal Guarantors & Corporate Guarantors 20. Term Loan account statement 21. Buyer's credit utilisation report 22. 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. Common Loan agreement Dated 04.05.2017 2. Personal guarantee Agreement Dated 04.05.2017 3. 13(2) SARFAESI notice copy Dated 13.03.2019 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 it had invoked the aforesaid Guarantee vide its notice dated 13.03.2019 issued to the Corporate Debtor as well as to the Personal Guarantor herein under the provisions of Section 13(2) of SARFAESI Act 2002.

6. It has been added by the Applicant that the CIR process has already been initiated in respect of the Corporate Debtor by this Adjudicating Authority vide order 25.07.2018 in the matter of Super Print Services Vs M/s. Xalta Food and Beverages Pvt. Ltd. (CP. No. 702/ND/2018).

7. It is further submitted by the Applicant that it had sent a Notice via Speed Post dated 23.06.2021 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 demanding payment of total outstanding amount of Rs.14,91,62,709.79/-. It is added that the Demand Notice could not be served by Speed Post and therefore, the Demand Notice was served through newspaper publication made in the newspapers namely 'Jansatta' (Hindi) and 'Financial Express' (English) on 30.12.2021.

8. The Applicant has also submitted that it has served the copy of this Application to the Respondent/Personal Guarantor vide Email dated 06.05.2022 in compliance of Section 95(5) of IBC, 2016.

9. 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.

10. Vide order dated 04.05.2022, 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 18.07.2022 and 25.07.2022.

11. 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.

12. 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. Harvinder Singh having its registration no. IBBI/IPA-001/IP-P00463/2017-18/10806, and email id harvinder@akgandaassociates.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.

13. The Resolution Professional Mr. Harvinder Singh 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.

14. 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.

15. List the matter on 24.08.2022.


(L. N. GUPTA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)