

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH COURT III**



**C.P.(IB)-164(MB)/C-III/2024**

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

In the matter of

**Central Bank of India Limited**

Having Registered Office at: Chandermukhi  
Nariman Point, Mumbai-400021.

**....Financial Creditor/Petitioner**

Vs

**Sumatchand Gouti Jewellers Private  
Limited**

Having Registered Office at: Block  
No.80/82,4<sup>th</sup> floor, Dhanji Street Zaveri  
Bazar, Mumbai, Maharashtra, India,  
400003.

**.... Corporate Debtor/Respondent**

**Order Pronounced on: 21.06.2024**

**CORAM:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

**APPEARANCES:**



For the Financial Creditor:

Adv. Surbhi Soni , Adv.Kunal  
Vaishnav, i/b MGV & Associates

For the Corporate Debtor

Adv. Kunal Kanungo, Adv.Tanushree  
Sagoni, Adv. Atishay Jai

**PER: SH. CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)**

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1. The Present Company Petition (IB) 164 (MB)/2024 is filed under **Section 7** of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the Central Bank of India Limited (**“Financial Creditor”**) for initiating Corporate Insolvency Resolution Process (“CIRP”) against M/s. Sumatichand Gouti Jewellers Private Limited (**“Corporate Debtor”**) for a default of **Rs. 1544777984.12/-** (One Hundred and Fifty-Four Crores, Forty-Seven Lakhs Seventy-Seven Thousand, Nine Hundred Eighty-Four and Twelve Paise Only) under the Bank Guarantees issued in favor of Union Bank of India on Behalf of the Corporate Debtor.

**Brief Facts:**

2. The Corporate debtor had approached the Financial Creditor for availing a Metal Gold Loan with bank Guarantee in favour of Union Bank to the extent of Rs.115,00,00,000/- (Rupees One Hundred and Fifteen Crores Only). Vide sanction letter 5.09.2012 the Financial Creditor sanctioned the said loan under Cent Bullion Scheme and also agreed to give bank guarantee to Union Bank of India against counter Guarantee of Corporate Debtor.
3. The Corporate Debtor executed a Demand Promissory Note dated 07.09.2012 wherein the Corporate Debtor undertook to pay on demand Rs.115,00,00,000/- (Rupees One Hundred and Fifteen Crores Only) together with interest from the even date at the rate of 3.5% over Base Rate to Financial Creditor as notified from time to time.



4. The Corporate Debtor agreed to pay the Financial Creditor compound interest at the rate of 3.50% over Base rate of the Bank on monthly basis on the debit balance in Overdraft Account and also agreed to pay interest at such higher rate as may be determined and revised by the Financial Creditor according to the guidelines of the RBI and/or the practice of revision of interest prevalent amount Bankers and or fixed by the Financial Creditors as per its Central Office guidelines.
5. Further vide letter of Waiver dated 07.09.2012, the Corporate Debtor waived the presentment of above referred Demand Notice and undertook to pay the amount due on the Demand Notice without the same being presented to the Corporate Debtor.
6. The Corporate Debtor vide Letter dated 06.09.2012 hypothecated all goods, stock, raw materials, plant and machineries, Factory, warehouses, godowns etc., against the Metal Loan advanced by the Financial Creditor.
7. The Corporate Debtor and Financial Creditor further entered into Bullion Agreement dated 7.09.2012 wherein the Financial Creditor agreed to purchase/import the bullion for the purpose of sale to the Corporate Debtor against the payment of the Bullion value and agreed to provide Bullion Loan to the Corporate Debtor.
8. The Corporate Debtor and its Directors vide Counter Guarantee and Indemnity dated 07.09.2012 jointly and severally agreed to indemnify Financial Creditor and pay on demand all such amounts that Financial Creditor will pay under the Bank Guarantee issued in favour of the Union Bank of India on terms and conditions mentioned therein.
9. The Director of the Corporate Debtor i.e., Mr. Sumatichand Gouti, vide Deed of Guarantee dated 7.09.2012 personally guaranteed the performance of the Corporate Debtor of all Corporate Debtor's obligation under Bullion, Counter Guarantee and Indemnity and pay the Corporate Debtor on demand without



demur/contest of the Principal Sum not exceeding Rs.115,00,00,000/- (Rupees One Hundred and Fifteen Crores Only) together with interest, cost, charges, expenses etc.

10. The Financial Creditor further issued a 1st Bank Guarantee bearing No.387313BG0000026 dated 01.02.2013 for a sum of Rs.57.5 Crores in favor of Union Bank valid upto 11.12.2014. Further the Financial Creditor also issued a 2nd Bank Guarantee bearing No.387314BG0000286 dated 19.09.2014 for a sum of Rs. 57.5 Crores.
11. The Financial Creditor further vide its 2nd Sanction Letter dated 05.04.2017 bearing No. CFB/NPT/2017-18/13, renewed the Cash Credit cum Bank Guarantee limit of Rs.115,00,00,000/- (Rupees One Hundred and Fifteen Crores Only) against Security of Hypothecation of Gold and Jewellery on terms and conditions mentioned therein.
12. The Financial Creditor vide letter dated 11.10.2018 approved the short review of the existing cash credit cum bank guarantee limits of Rs.115 Crores (Rupees One Hundred and Fifteen Crores Only) on the existing terms and conditions.
13. Vide a Deed of Equitable Mortgage by Deposit of Title Deeds dated 28.12.2018, Saurav Jewellers Private Limited deposited title deeds of Flat No.243 and 253,24th &25th Floor, (Duplex Pent House) at RAAG Co-operative Housing Society Ltd, Film Road, Gokuldharm, Goregaon East, Mumbai-400063 as security towards payment of Rs.115,00,00,000/- (Rupees One Hundred and Fifteen Crores Only) together with interest, cost, charges, expenses etc. granted by the financial Creditor to the Corporate Debtor.
14. The Financial Creditor vide its 3rd sanction letter bearing No.CFB-CR/SKS/2019-20/48, dated 03.09.2019 renewed the Cash Credit cum Bank Guarantee limit of Rs.115,00,00,000/- (Rupees One Hundred and Fifteen Crores Only) against Security of Hypothecation of Gold and Jewellery on



terms and conditions mentioned therein.

15. The Financial Creditor on 7.12.2019 extended the validity of Bank Guarantee bearing No. 387314BG0000286 for a further period of three months i.e. till 10.03.2020 and on 30.01.2020 extended the Validity of Bank Guarantee bearing No.387313BG0000026 for a further period of three months i.e. till 01.05.2020.
16. The Union Bank of India further vide a demand Notice dated 03.03.2020 bearing Ref. No. ZB/GOLD/875/2019-2020 informed the Financial Creditor that the loan availed against bank Guarantees was overdue thus invoked the Bank Guarantees and demanded immediate payment.
17. The Financial Creditor vide Demand Notice dated 04 March 2020 informed the Corporate Debtor about the invocation of Bank Guarantees by Union Bank and demanded the Corporate Debtor to make immediate arrangement for of Rs.115,00,00,000/- (Rupees One Hundred and Fifteen Crores Only) to meet its liability.
18. A reminder letter was issued by the Union Bank of India on 11.03.2020.
19. The Corporate Debtor on 16.03.2020 accepted and admitted that the bank Guarantees have been invoked however expressed its inability to pay the payment in lieu of the invocation.
20. The Advocate of the Financial Creditor vide letter dated 29.12.2021 called upon the Corporate Debtor and various guarantors to jointly and severally pay the financial Creditor a sum of Rs.116,02,48,351.00/- as on 31.10.2021 with further interest @ 11.50%p.a. with monthly rest and simple penal interest @1 p.a. from 01.11.2021 till the final payment and realization failing to which the Financial Creditor would be constrained to adopt of legal proceedings.



21. The Corporate Debtor since 17 March 2020 has repeatedly failed to pay the Principal amount along with interest, cost, charges and expenses incurred by the Financial Creditor

**Reply by the Corporate Debtor:**

22. In response, the Corporate Debtor filed a Reply dated 11.04.2024 admitting its default to repay the Financial Creditor.
23. The Corporate Debtor states that it had availed a loan facility as described in the Company Petition. The Corporate Debtor has generally been making payments to the Financial Creditor from time to time. However, from the advent of the year 2020 particularly after Covid-19 the Corporate Debtor went into big losses therefore due to financial crunch irregular payments were made to the Financial Creditor.
24. The Corporate Debtor states that it is financially weak and not in a position to repay the entire debt of the Financial Creditor therefore in the spirit of the resolution process for benefit of all the stakeholders the Corporate Debtor admits its default.

**Findings and Observations:**

25. Heard the Ld. Counsel for the Parties and also perused the record.
26. Considering the factual matrix given in the Petition and the contents of the Reply, it is an undisputed and admitted fact that the date of Default is 17.03.2020 and the Petition was filed on 7.12.2023. Therefore, it is imperative to examine whether the petition was filed within the limitation period or not. As the date of default is 17.03.2020 limitation starts from 17.03.2020. Under the normal circumstances, the limitation would have expired on 17.03.2023 However, the Hon'ble Supreme Court in the Suo Moto Writ Petition (C) No. 3 of 2020" has excluded the period from 15.03.2020 to 28.02.2022 for the purpose of limitation. Consideration the said exclusion period, we find that the present petition under Section 7 of the Code, 2016 filed on 7.12.2023 has



been filed within limitation period.

27. The Corporate Debtor in its reply dated 11.04.2024 has admitted the fact of availing loan facility from the Financial Creditor and also that the default committed by it under section 7 of IBC.

28. It is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder. We rely on the judgement of Hon'ble Supreme Court in ***Innovative Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]*** wherein it was held as follows:

*“28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days’ receipt of a notice from the adjudicating authority.*

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

29. In view of the discussions above, this Tribunal is of considered view that debt and default has been established by the Financial Creditor and the same has been admitted by the Corporate Debtor. The Petition is filed within the limitation period and the default amount is excess of Rs. 1 Crore and



thus above the threshold limit mandated in Section 4(1) of the Code. Accordingly, we are satisfied that the present Petition is maintainable.

30. In view of the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no. 164 of 2024 is **admitted** and ordered as follows:

**ORDER**

- i. The above Company Petition No. (IB) 164 (MB)/2024 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Sumatichand Gouti Jewellers Private Limited.**
- ii. The Petitioner has proposed the name of **Mr. Amit Gupta**, Registration No. IBBI/IPA-001/IP-P00016/2016-2017/10040, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 30.10.2023 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 01.12.2023 Accordingly, **we appoint Mr. Amit Gupta, [caamith.gupta@gmail.com](mailto:caamith.gupta@gmail.com)** , and address at 101,Kanakia Atrium 2, Cross Road, Behind Courtyard Marriott, Andheri (East), Mumbai- 400093 **as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
- iii. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order.
- iv. There shall be a moratorium under section 14 of the Code prohibiting the following:



- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- v. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- vi. The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii. The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.



- viii. The public announcement of the Corporate Insolvency Resolution process shall be made immediately as specified under section 13 of the Code.
- ix. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- x. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xii. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xiii. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xiv. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xv. Accordingly, this Petition is **Admitted**.

**Sd/-**

**Charanjeet Singh Gulati**  
**Member (Technical)**

**Sd/-**

**Lakshmi Gurung**  
**Member (Judicial)**