

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT – III**

**C.P. NO. 203(IB)/MB/2023**



Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019

**Invent Assets Securitization and Reconstruction Private Limited**

(Acting in its capacity as a Trustee of INVENT/1718/ACB/S119 Trust)

Having its registered address at:

Suite B, Ground Floor,  
'Bakhtawar' Ground Floor,  
225, Nariman Point,  
Mumbai – 400 021.

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

**Versus**

**Mr. Popatlal K. Jain**

(Legal Heir of Smt. Sakuben K. Jain (since deceased), the Personal Guarantor of M/s Shree Daksh Jyot Silk Mills Private Limited) Survey No. 20, New Mollchand Compound, Katai Village, Kohni-Kamba Road, Bhiwandi – 421 302.

**.... Respondent/ Personal Guarantor**

**Order Pronounced on: 27.01.2025**

**Coram:**

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

Hon'ble Shri Charanjeet Singh Gulati (Technical)

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

C.P. No. 203(IB)/MB/2023



**Appearances:**

For Financial Creditor: Adv. Rohit Giri a/w. Adv. Raina Birla

**PER: MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)**

---

**ORDER**

1. The present Company Petition (IB) No. 203 of 2023 was filed by the Invent Assets Securitization and Reconstruction Private Limited, (**‘the Petitioner’/ ‘the Financial Creditor’**) under Section 95 of the Insolvency and Bankruptcy Code, 2016 (**‘the Code’/ ‘IBC’**) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 seeking to initiate Personal Insolvency Resolution Process (**‘PIRP’**) against Mr. Popatlal K. Jain (**‘Respondent’**), the legal heir of Smt. Sakuben K. Jain (since deceased), who was the Personal Guarantor to the loan facility extended to M/s Shree Daksh Jyot Silk Mills Private Limited, (**‘the Corporate Debtor’**).
2. It is submitted that vide Sanction Letter dated 30.05.2011, the Abhyudaya Co-Operative Bank Limited (**‘Original Financial Creditor’**) had sanctioned Term Loan of Rs. 1284 Lakhs in favour of the Corporate Debtor. The said Term Loan was secured by Guarantee Deed dated 03.06.2011, executed inter alia by Mrs. Sakuben K. Jain (since deceased).
3. Mrs. Sakuben K. Jain (since deceased) had also mortgaged her personal property standing in her name as per Mortgage Deed 06.02.1992, which is annexed as Annexure – ‘C’ of the Petition. The description of mortgaged property is reproduced as under (**‘said Property’**):

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

C.P. No. 203(IB)/MB/2023

*All those pieces or parcel of land along with premises Municipal House No. 138, Brahmanali, Bhiwandi, situate at Mouje Village, Bhiwandi, taluka, District Thane, bearing City Survey No. 1134 admeasuring about 227.7 sq. yards.*

4. The Corporate Debtor defaulted in repayment towards the Facility despite numerous letters and reminders by the Petitioner. Accordingly, the account of the corporate debtor was declared Non-Performing Asset (N.P.A.) as 31.03.2016.
5. Pursuant to the default committed by the Corporate Debtor, 'Abhyudaya Co-Operative Bank Limited', referred the matter to the Ld. Sole Arbitrator Shri K.J. Paratwar in Arbitration Case No. ARB/ACB/KFP/1132 of 2016. The Arbitral Award was delivered on 26.04.2018, in favour of the Original Financial Creditor directing the Corporate Debtor and its Personal Guarantors to pay Rs. 7,91,68,692 with interest on Rs. 7,36,58,094 from 01.12.2016 till full payment.
6. We observe that the Respondent herein was arrayed as Opponent no. 4(c) being one of the legal heir of Shri Sakuben K. Jain (since deceased) and specific direction was issued with respect to Respondent herein holding that liability of Opponent No. 4(c) shall be restricted to the extent of the mortgaged property.

*(A) The Dispute is allowed with costs with rider that liability of Legal Heir i.e., Opponent No. 4(c) shall be restricted to the extent of the mortgaged property*

7. The Original Financial Creditor assigned its loan to the Corporate Debtor together with all its rights, title and interest, underlying security

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

C.P. No. 203(IB)/MB/2023

interest, pledges, guarantees, etc. in favour of the Petitioner herein. A copy of Assignment Deed is annexed as Annexure – ‘I’ to the Petition.

8. Further, due to failure in repayment towards the Facility, the Petitioner issued a demand/recall notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 dated 28.10.2022 to the Respondent (**‘said Demand Notice’**). It is submitted that the Personal Guarantor defaulted to make payment of Rs. 16,75,98,843/- *interest and other expenses* within fourteen (14) days of service towards the said Demand Notice thereby, making the default a continuing one (**‘said Outstanding Debt’**).
9. At this juncture, we refer to Clause 8 of the Deed of Guarantee providing that the legal heirs of the deceased personal guarantor be liable for repayment of outstanding debts of financial creditor.

“xxx

*8. In the event of death of any of Guarantors during the continuance of the guarantee, the estate and effects and the heirs, executors and administrators of such deceased Guarantors will continue to be liable for full repayment of the moneys then due under the said credit facilities together with further interest, costs and charges payable by the Borrower in respect thereof. It is further agreed by the Guarantors that until the written notice of the Guarantor’s death is delivered to the Bank at its Branch office at Bhiwandi, the Bank shall be entitled to continue the credit facilities to the Borrower so as to bind the estate, effects, heirs, administrators and*

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

C.P. No. 203(IB)/MB/2023

*assigns of the deceased Guarantors also for the money  
advanced subsequent to his/her death. ....”*

10. Therefore, prima facie the Respondent has defaulted in its liability and a Petition under Section 95 of the Code is maintainable qua the legal heir of Smt. Sakuben K. Jain that is, Respondent herein.

11. The Hon'ble Supreme Court in ***Dilip B Jiwrajka Vs. Union of India & Ors. (Writ Petition (Civil) No. 1281 of 2021)*** decided on 09.11.2023 upheld the constitutional validity of Sections 94 and 100 of the Code as follows-:

“ xxx.....

- i. No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 of the IBC;*
- ii. The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the Adjudicating Authority is recommendatory in nature on whether to accept or reject the application.*

*...xxx”*

***(emphasis provided)***

12. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is in prescribed form as mandated under section 95(6) of the IBC, and a copy of this present petition was served on the Personal Guarantor/ Respondent via e-mail dated 24.11.2022.

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

C.P. No. 203(IB)/MB/2023



13. During the course of the hearing on 15.01.2025, perusal of the present petition showed that the AFA of the Resolution Professional had expired and that this Tribunal had indicated that the Resolution Professional shall be appointed from the panel of IBBI. However, at the time of writing of this judgment, upon verification from IBBI website, we observe the proposed Resolution Professional has a valid AFA up to 30.06.2025 and has also given her written consent dated 21.11.2022 to act as a Resolution Professional. Hence, we hereby appoint, **Mrs. Hetal Gaurang Kothari**, having Registration No. IBBI/IPA-001/IP-PO1610/2019-20/12500, e-mail id: ipheatalkothari@gmail.com as RP.
14. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/ Directions issued in this regard.
15. This Bench also directs for an ad-hoc payment of Rs. 1,50,000/- to be paid by the Financial Creditor to the Resolution Professional (RP) immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
16. The interim-moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of this application by the Financial Creditor and will cease to have effect on the date of admission. During such interim-moratorium period (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
17. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 including but not limited to issue relating to limitation and invocation of Personal Guarantee of the

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

C.P. No. 203(IB)/MB/2023



Respondent by the Petitioner and shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days** of the receipt of this order.

18. Further, the Registry is hereby directed to communicate this order to Financial Creditor, Personal Guarantor, Corporate Debtor and Resolution Professional through speed post and e-mail correspondence immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record. The Petitioner is also directed to forthwith communicate this order to the Resolution Professional.

19. List the matter as and when the Report is filed by RP by way of an I.A.

Sd/-

**CHARANJEET SINGH GULATI  
(MEMBER TECHNICAL)**

Akshita, L.R.A

Sd/-

**LAKSHMI GURUNG  
(MEMBER JUDICIAL)**