

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT – III**

**C.P. NO. 642(IB)/MB/2024**

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

**Central Bank of India**

Having its Head Office at:

Chandermukhi, Nariman Point,  
Mumbai – 400 021.

And Branch Office at:

Stress Asset Management Branch,  
346, Standard Building, 3<sup>rd</sup> Floor,  
Dr. D.N. Road, Fort,  
Mumbai – 400 023.

E-mail Id: agmifb3873@centralbank.co.in

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

**Versus**

**Sumatichand Gouti**

Having address at:

Block No. 80/82, 4<sup>th</sup> Floor,  
Dhanji Street, Zaveri Bazar,  
Mumbai – 400 003.

E-mail Id: scgjpl@gmail.com

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

**Order Pronounced on: 17.01.2025**

**Coram:**

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

Hon'ble Shri Charanjeet Singh Gulati (Technical)

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**Appearances:**

For Petitioner: Adv. Surbhi Soni i/b MAV & Associates

For Respondent:

***PER: SHRI CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)***

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**ORDER**

1. The present Company Petition (IB) No. 642 of 2024 is filed by Central Bank of India (**'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 (**'CIRP'**) against Mr. Sumatchand Gouti (**'Respondent'/ 'Personal Guarantor'**).
2. Central Bank of India (**'Central Bank'**), the Petitioner herein, is a public company (limited by guarantee) designated as a Public-Sector Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It is an Indian multinational public sector banking and financial services statutory body.
3. The Petitioner during the course of its business of banking had extended a Metal Gold Loan to one Sumati Chand Gouti Jewellers Private Limited (**'the Corporate Debtor'**), wherein the Respondent is the Director of the Corporate Debtor. The Corporate Debtor availed an amount to the tune of Rs. 115 Crores vide Sanction Letter dated 07.09.2012 (**'Facility'**).

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4. The Facility was extended as a Fund Based Facility (Metal Gold Loan) under Cent Bullion Scheme for drawing gold for making jewellery for export purposes. The amount sanctioned was Rs. 115 Crores along with an interest of 3.5% per month over base rate of the bank and a Personal Guarantee equivalent to the amount sanctioned was created in favour of Union Bank of India, Overseas Branch, Kolkata.
  
5. The Corporate Debtor executed the following documents to secure the Facility as follows:
  - a) Demand Promissory Note dated 07.09.2012 as security for the repayment of Overdraft/Cash Credit/EBP/EBD Account
  
  - b) The Corporate Debtor acknowledged a letter addressed by Central Bank dated 07.09.2012 thus, agreeing to pay compound interest at the rate of 3.50% over Base Rate of the Bank on monthly rest
  
  - c) Letter of Waiver dated 07.09.2012
  
  - d) Letter of Hypothecation dated 07.09.2012, creating first charge over all assets (as described) in favour of Financial Creditor
  
  - e) Letter of Undertaking dated 07.09.2012 in regards the Facility availed by the Corporate Debtor
  
  - f) Bullion Agreement dated 07.09.2012, executed for the purpose of import or purchase of Bullion by the Financial Creditor for the purpose of sale to Corporate Debtor for such time period as per terms and conditions given under Bullion Agreement

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g) Deed of Corporate Guarantee dated 07.09.2012, executed in terms of Bullion Agreement and Letter of Hypothecation, irrevocably and unconditionally guaranteeing performance of all obligations in regards the Facility Agreement

h) General Counter Guarantee and Indemnity dated 07.09.2012 by the corporate debtor in favour of the Financial Creditor in respect of guarantees that the financial creditor would give on behalf of corporate debtor

6. In furtherance to the terms of the Facility availed, the corporate debtor hypothecated gold/jewellery as a primary security and a lien on fixed deposit maintained by the corporate debtor with financial creditor of Rs. 12 crores as collateral security.

7. The Facility was secured by a personal guarantee of the Respondent, Mr. Sumatichand Gouti and corporate guarantor M/s Sumati Chand Gouti Jewellers Private Limited.

8. The Personal Guarantee of the Respondent, Mr. Sumatichand Gouti was executed vide Deed of Guarantee dated 07.09.2012. The personal guarantee is irrevocable and unconditional and accordingly, the Respondent is to pay and satisfy to the Petitioner Bank on demand without demur and/or contest all indebtedness as primary obligor to the Corporate Debtor/Principal Borrower.

9. The Corporate Debtor during the course of business utilised entire limit availed through the Facility, which was first renewed by the Financial Creditor vide Sanction Letter dated 05.04.2017. Also, the terms and conditions of Facility as prevailing from the date of sanction of cash credit cum bank guarantee limit of Rs. 115 Crores was approved by

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Financial Creditor vide a letter dated 11.10.2018. Later, the Facility was renewed by the financial creditor vide Sanction Letter 03.09.2019, on existing terms and conditions and at rates as mentioned in the Sanction Letter.

10. The petitioner issued a Legal/Recall/Demand notice dated 29.12.2021 to principal borrower/Corporate Debtor, Respondent/ Personal Guarantor of the borrower and Corporate Guarantors for repayment towards a default of Rs. 116,02,48,351/- as on 31.10.2021 with further interest of 11.50% p.a. with monthly rates and a simple penal interest at 1% p.a. from 01.11.2021 till final payment and/or realization within seven (7) days of receipt of said legal/ demand notice.
11. The Petitioner issued a demand/recall notice read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 through Speed Post A.D. on 01.07.2023 under Section 95 of the Code to the Respondent (**‘said Demand Notice’**). The said Demand Notice was addressed for repayment towards a default of Rs. 127,92,07,317.76 (Rupees One Hundred and Twenty-Seven Crores Ninety-Two Lakhs Seven Thousand Three Hundred and Seventeen and Seventy-Six Paise Only/-) as on 21.06.2022 (including interest and other charges from 22.06.2022), within fourteen days of service towards the said Demand Notice.
12. The Corporate Debtor and the Respondent failed to repay the debt despite numerous letters and reminders by the Petitioner towards the Facility availed thereby, making the default a continuing one. Further, the Date of Default as identified from Exhibit ‘AA’ of the Petition being Form – C of Record of Financial Information and Form – D Record of Default of the Petitioner maintained with Information Utility (NeSL) is

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17.03.2020 and the amount of default recorded is Rs. 102,75,82,242/-  
**(‘said outstanding debt’).**

13. In view of the aforesaid, the Present application has been filed for appointment of Resolution Professional under section 95 of IBC.

14. 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-:

“ xxxxx.....

- 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.*

...xxxxxxxx”

**(emphasis provided)**


15. 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 22.04.2024.

16. The Counsel for the Petitioner has not suggested the name of Resolution Professional (RP) to be appointed under the Code. Thereafter, we

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appoint **Mr. Hasti Mal Kachhara**, e-mail ID: hastimal.kachhara@gmail.com; Mobile No.: +91 9867557660 as a Resolution Professional (RP) from the panel of RP maintained by the Insolvency and Bankruptcy Board of India (IBBI) in the present Petition.

17. The fee payable to Resolution Professional (RP) shall be in accordance with the Regulations/Circulars/Directions issued by the IBBI in this regard.
18. This Bench also directs for an advance 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).
19. 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.
20. The Resolution Professional as appointed 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 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.
21. Further, the Registry is hereby directed to communicate this order to Financial Creditor, Personal Guarantor, Corporate Debtor and

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Resolution Professional even by way of 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.

22. 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)**