

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

IA No. 1536/2022

&

CP (IB) No. 270/Chd/HP/2020

**Under Section 95 of Insolvency and
Bankruptcy Code, 2016**

**(Report under Section 99-100,
Read with Rule 7(2) of the
Insolvency and Bankruptcy Code,
2016)**

**IN THE MATTER OF CP (IB) No. 270/Chd/HP/2020 and IA No.
1536/2022:**

CENTRAL BANK OF INDIA

HAVING ITS OFFICE AT
STRESSED ASSETS MANAGEMENT, (SAM) BRANCH,
CENTRAL BANK OF INDIA,
ZONAL OFFICE BUILDING, 3rd FLOOR
SCO 58-59, SECTOR 17-B, CHANDIGARH

FILED THROUGH

RESOLUTION PROFESSIONAL
PROPOSED BY CENTRAL BANK OF INDIA
UNDER SECTION 95(1) OF THE I & B CODE, 2016
SH. JALESH KUMAR GROVER
INSOLVENCY PROFESSIONAL
HAVING IBBI REGISTRATION NO.:-
IBBI/IPA-001/IP-P00200/2017-2018/10390
H. NO. 202, GH-40,
SECTOR - 20, PANCHKULA
HARYANA - 134117

...Petitioner

VERSUS

SHRI AMIT KUMAR MODI

S/O SHRI S.K. MODI,
R/O HOUSE NO 99, SECTOR-3,
NEW SHIMLA, HIMACHAL PRADESH-171009

ALSO AT: -

SCO 140-141, SECTOR 34 A
CHANDIGARH -160022

ALSO AT:-

HOUSE NO.133, SECTOR-9 B
CHANDIGARH-160009

..Respondent/Guarantor

Section : 95 of Insolvency and Bankruptcy Code, 2016

Judgment delivered on: 01.03.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L.N,. GUPTA, MEMBER (TECHNICAL)**

Present:

For the Petitioner : Mr. Abhishek Anand, Advocate

For the Respondent/ : Mr. Yashraj Singh Deora, Advocate

Personal Guarantor

Per: Mr. Harnam Singh Thakur, Member (Judicial)

Mr. L. N. Gupta, Member (Technical)

IA No. 1536/2022

The present application is a Report filed by Resolution Professional under Section 99 of the Insolvency and Bankruptcy Code, 2016 recommending the admission of the application filed under Section 95 of

IBC, 2016. The report is taken on record and hence, application is disposed of accordingly.

JUDGMENT in CP (IB) No. 270/Chd/HP/2020

2. The present petition is filed by Central Bank of India through RP, Mr. Jalesh Grover (hereinafter referred to as '**petitioner**') under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as code) 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 (hereinafter referred to as Personal Guarantors Insolvency Rules) against Randhir Singh (hereinafter referred to as '**respondent**'), seeking an order for initiation of the Insolvency Resolution Process ("IR Process") against the respondent Shri Amit Kumar Modi, who is the personal Guarantor to M/s Kut Energy Private Limited ("Corporate Debtor/Principal Borrower") and who has extended personal guarantee to financial creditor namely, Central Bank of India.

3. On presentation of the petition, this Adjudicating Authority, appointed the Resolution Professional Mr. Jalesh Kumar Grover, RegistrationNo.IBBI/IPA-001/IP-P00200/2017-2018/10390,PhoneNo.950 1081808,Email:jk.grover27@gmail.com vide order dated 01.09.2022 under Section 97 of the Code.

4. The notice of this petition was issued to the respondent to show cause as to why this petition should not be admitted. The affidavit of service was filed vide Diary No. 01669/03 dated 18.01.2023.

5. In its report under Section 99, Resolution Professional has recommended the admission of the petition filed under Section 95 of the Code. The relevant grounds for admission of the application recorded in the report are as follows:-

“RP has perused/examined the Insolvency Application filed by the Financial Creditor under Section 95 of the Code along with all the underlying documents and Annexures as mentioned in the petition and has formed the opinion to recommend the same for approval to this Adjudicating Authority, based on following grounds:-

- a. The Insolvency Application has been filed in requisite FORM – C in terms of Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 supported by requisite fee and documents.*
- b. The Insolvency Application satisfies the requirements set out in Section 95 of the Code.*
- c. The Personal Guarantor has executed a deed of guarantee in favour of the Petitioner being Central Bank of India*
- d. The Personal Guarantor was duly served with Demand Notice dated 07.10.2020 by the Financial Creditor 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 for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application on 05.11.2020, but the Personal Guarantor neither repaid the outstanding nor provided any evidence of repayment of debt.*
- e. In terms of Section 99(2) of the Code, the undersigned informed the Respondent/Personal Guarantor vide email dated 09.09.2022 about the Order dated 01.09.2022 and further requested the Respondent/Personal Guarantor to prove the repayment of debt claimed as unpaid by the Petitioner Bank/Financial Creditor.*
- f. A Demand Notice under Section 95(4)(b) of the I&B Code, 2016 read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personnel Guarantors to Corporate Persons) Rules, 2019 was issued upon the Guarantor i.e., Mr. Amit Kumar Modi demanding the payment of the unpaid debt in default amounting to **Rs. 102, 31, 26, 013.89/-** as per the provisions of IBC, 2016. Since no reply was received on the demand notice, an application under section 95 of I&B Code was filed with this Hon’ble Adjudicating Authority. Thus, Mr. Amit Kumar Modi (Respondent) is liable for repayment of outstanding amount.*

- g. The Insolvency Application does not relate to “excluded debts” as defined under Section 79(15) of the Code.*
- h. The Debtor, Personal Guarantor, is not eligible for fresh start under Chapter II of the Code.*

6. We heard the submissions of RP and pursued the report filed by RP under Section 99 and the Application filed by the Creditor under Section 95 of IBC, 2016.

7. The Creditor has placed on record, the Guarantee Agreement dated 28.08.2009, 12.05.2010, 04.02.2011, 31.10.2012, 27.09.2013, 12.11.2014, 30.09.2015 whereby the Personal Guarantor Mr. Amit Kumar Modi guaranteed the repayment of credit facilities granted by the Central Bank of India to, M/s Kut Energy Pvt. Ltd. the Principal Borrower.

8. It is seen from the record that the aforesaid guarantees have been invoked by the Creditor Central of India by issuing notice dated 01.04.2017 under Section 13(2) of the SARFAESI Act, 2002.

9. Further, the Creditor sent the Demand Notice via Speed Post Form B dated 07.10.2020 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 the total outstanding amount of Rs.102,31,26,013.89/- (Rupees One Hundred Two Crores Thirty One Lakhs Twenty Six Thousand Thirteen and Eighty Nine Paisa only). The said Demand Notice was served by Speed Post. The tracking reports are attached as Annexure A-15 of the petition.

10. The petition filed by the creditor on 05.11.2020 and was re-filed on 27.11.2020 is well within period of limitation.

11. On 24.05.2023, it was submitted by the Ld. counsel for the Respondent/Personal Guarantor (PG) has no objection to the Report submitted by the Resolution Professional.

12. In sequel to the above, based on the recommendation made by RP in its Report and no objection raised on behalf of the personal guarantor, **the application i.e. CP (IB) No. 270/Chd/HP/2020 filed under the provisions of Section 95 of IBC, 2016 is hereby admitted under Section 100 of the IBC, 2016.** The Petitioner Bank is directed to deposit Rs. 2,00,000/- (Rupees Two Lakh Only) to the bank account of the Resolution Professional within one week, utilisation and adjustment of which shall be subject to the rules and regulations made under the provisions of the Code. The Insolvency Resolution Process is initiated against the Petitioner/Debtor and the moratorium is declared, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC, 2016. During the moratorium period-

- (a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
- (b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- (c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

(d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

13. The Insolvency Professional, Mr. Jalesh Kumar Grover, who has been appointed as RP under Section 97, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of the NCLT, Chandigarh, inviting claims from all creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC, 2016. The publication of the notice shall be made in newspapers, one in English and the other in Vernacular having wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry, one shall be placed by the Registry on NCLT website and the other shall be affixed in the premises of this Authority.

14. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along its his report on the plan to this Authority within a

period of 21 days from the last date of submission of claims, as provided under Section 106.

15. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons therefore. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the report under Sub-Section (1) of Section 106, for which at least 14 days notice to the creditors(as per list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107.

16. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the Resolution Professional shall perform its functions and duties in compliance with the code of conduct provided under Section 208 of the IBC, 2016.

17. As a sequel to the discussion foregoing, CP (IB) No. 270/Chd/HP/2020 filed under Section 95 of the IBC, 2016 is admitted accordingly. Consequently, the Insolvency Resolution Process stands initiated against the debtor/Personal Guarantor.

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

19. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

Sd/-

(L.N. Gupta)
Member (Technical)

March 01, 2024
TBG/PRF

Sd/-

(Harnam Singh Thakur)
Member (Judicial)