



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

C.P. (IB) NO. 807(MB)2024

Under Section 95(1) of the Insolvency & Bankruptcy Code, 2016 *r/w* Rule 7(2) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

In the matter of

Abhyudaya Co-Op. Bank Limited

CIN: MSCS/CR/249 of 2007

.....Applicant/ Financial Creditor

Versus

Mrs. Ritadevi Devilal Chapagain

..... Respondent/Personal Guarantor

Order pronounced on 08.07.2025

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Financial Creditor : Adv. Shreyansh Desai
i/b M/s V.Deshpande &Co.
For the Resolution Professional : Ms. Sayali Patil i/b
Adv. Maulik Chokshi
For Personal Guarantor/ Respondent : Mr. Amit A. Tungare

ORDER**Brief facts:**

1. The present petition is filed *u/s.* 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016/the Code”) *r/w.* Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **Abhyudaya Co-Op. Bank Ltd** (“hereinafter referred to as Applicant/Financial Creditor”) for the purpose of initiating Insolvency Resolution Process against **Mrs. Ritadevi Devilal Chapagain** (“hereinafter referred to as Personal Guarantor/Respondent”) for default of **Rs.50,23,81,797.97/-** (Rupees Fifty Crore Twenty-Three Lakh Eighty-One Thousand Seven Hundred Ninety-Seven and Ninety-Seven Paise only) as on 29.02.2024. The Date of Default, as specified in Part-III of the present petition is 31.05.2021 for the Personal Guarantor. The present application under Section 95(1) of the Code was filed on **21.05.2024**.
2. The Applicant was incorporated on 14.03.2023 bearing CIN: MSCS/CR/249 of 2007 and having its registered address at 36/2575, Abhyudaya Nagar, G.D Ambekar Marg, Mumbai- 400033. The Applicant is a Cooperative Bank limited company incorporated under the Companies Act, 2013. The present Application has been filed through its Authorized Signatory Mr. Rajendra Sitaram Gurav.
3. The Personal Guarantor, viz. **Mrs. Ritadevi Devilal Chapagain** having his address at Flat No. 102, "A" Wing, 1st Floor, Dosti Lilly (Dosti Acres) Co-op. Housing Society Ltd. Indian Hume Pipe Compound, Near Antop Hill Bus Depot, S. M. Road, Wadala (East),

Mumbai - 400 037 And/Or Flat No. 3502, 35th Floor,"A" Wing, Lodha Dioro, New Cuffe Parade, Wadala Truck Terminal, Wadala, Mumbai - 400 022 is the Personal Guarantor for **M/s. Protocol Marine Services Private Limited** (Corporate Debtor) (now under liquidation) for the loan facility extended to the Corporate Debtor.

4. The Corporate Debtor is a private company limited by shares bearing CIN U63090MH2001PTC133857, incorporated on 05.11.2001 and having its registered office at, 1502/A, 15TH FLOOR UNIVERSAL MACESTIC, PL. LOKHANDE MARG, CHEMBUR (W), Mumbai City, MUMBAI, Maharashtra, India, 400043. It has authorized share capital of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakh only) & paid up share capital of Rs. 1,21,58,000/- (Rupees One Crore Twenty-One Lakh Fifty-Eight Thousand only)

Submissions of the Applicant:

1. The Applicant, Abhyudaya Co-Operative Bank Ltd., a Multi-State Scheduled Bank, had from time to time extended various credit facilities to the Corporate Debtor, M/s. Protocol Marine Services Pvt. Ltd., a company engaged in the marine logistics business, in the ordinary course of banking and commercial prudence. These facilities, extended between the period of September 2017 to March 2021, were granted under distinct sanction arrangements and secured by personal guarantees, hypothecation, and mortgage, as provided below.
2. Pursuant to a sanction letter dated 08.09.2017, the Bank sanctioned a term loan facility of Rs.4,20,00,000/- (Rupees Four Crore Twenty Lakh only) which was availed by the Corporate Debtor through Loan Account No. ESCLN/500482. The loan documentation executed on 15.09.2017 included a Demand Promissory Note, Loan Agreement,

Hypothecation Agreement over plant and machinery, a Letter of Undertaking, and a personal guarantee deed jointly executed by Mrs. Ritadevi Devilal Chapagain and her husband Mr. Devilal Hiranman Chapagain, binding themselves jointly and severally for the due repayment of the facility.

3. Simultaneously, under another sanction letter also dated 08.09.2017, a term loan of Rs.75,00,000/-(Rupees Seventy-Five Lakh only) was sanctioned under Loan Account No. ESCLN/500483. The associated documentation mirrored that of the larger term loan facility, comprising loan agreements, hypothecation deeds, and personal guarantees, all executed on 15.09.2017. These facilities were disbursed on the basis of the banking relationship and specific commercial needs of the Corporate Debtor.
4. Thereafter, the Corporate Debtor sought additional financial assistance, and the Bank, vide its sanction letter dated 13.12.2019 and further documentation dated 15.01.2020, extended a Working Capital Term Loan facility of Rs.3,50,00,000/- (Rupees Three Crore Fifty Lakh only) under Loan Account No. ESCLN/500547. To secure this facility, the Corporate Debtor executed a series of standard banking documents, including a Loan Agreement, Hypothecation Agreement for vehicles, and an undertaking letter. The personal guarantors once again reaffirmed their commitment by executing a fresh deed of guarantee on 16.01.2020, confirming their liability in the event of default.
5. Subsequently, the Corporate Debtor availed a term loan of Rs. 50,00,000/- (Rupees Fifty Lakh only) under Loan Account No. ESCLNRLF/400007, sanctioned via letter dated 04.06.2020 and

accepted on 06.08.2020. The parties entered into a Loan Agreement, Hypothecation Agreement, and other standard documents, along with a corresponding personal guarantee deed dated 06.08.2020.

6. In furtherance of its operations, the Corporate Debtor approached the Bank for short-term financial accommodation, pursuant to which the Bank sanctioned a Short-Term Corporate Loan facility of Rs. 2,00,00,000/- (Rupees Two Crore only)on 03.11.2020, which was availed under Loan Account No. ESCLN/500559. The Personal Guarantor executed a guarantee dated 10.11.2020 in respect of this facility.
7. Lastly, the Bank renewed and enhanced an existing Cash Credit Facility to the tune of Rs.27,00,00,000/-(Rupees Twenty-Seven Crore only) , pursuant to a sanction letter dated 24.03.2021. The facility was operationalized under standard security documentation, including a Hypothecation Agreement over stocks and book debts, and reaffirmation of personal guarantee obligations through fresh undertakings executed on 31.03.2021.
8. Subsequently, due to non-payment of the amount due and despite issuing Demand Notice to the Corporate Debtor, insolvency proceedings were initiated against the Corporate Debtor by one of its operational creditors under Section 7 of the Insolvency and Bankruptcy Code, 2016. The matter was adjudicated by the Hon'ble National Company Law Tribunal, Mumbai Bench, in Company Petition No. CP (IB) 406/MB/2022. By an order dated 07.10.2022 the Hon'ble Tribunal was pleased to admit the said petition and commence the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor. In terms of Section 14 of the Code, a moratorium was declared,

and an Interim Resolution Professional was appointed to take over the management and affairs of the Corporate Debtor.

9. Despite the lapse of the statutory period under CIRP and no viable resolution plan being approved by the Committee of Creditors, the Corporate Debtor failed to undergo any revival. Consequently, the Hon'ble Tribunal, vide its subsequent order dated 04.12.2023, passed an order for the liquidation of the Corporate Debtor under Section 33 of the Code. The said order was passed in continuation of the earlier proceedings in **CP (IB) 406/MB/2022**, and Mr. Harish Kant Kaushik was appointed as the Liquidator to carry out the process in accordance with the IBBI (Liquidation Process) Regulations, 2016.
10. In light of the above, it is submitted that the liability of the Personal Guarantor, namely Mrs. Ritadevi Devilal Chapagain, subsists independently and unaffected by the liquidation of the Corporate Debtor, in terms of the law laid down by the Hon'ble Supreme Court in *Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321*. The Applicant has, therefore, rightly invoked the personal guarantees furnished by the Respondent and initiated the present proceedings under Section 95 of the IBC against her.

Report of Resolution Professional:

11. This Tribunal appointed Mr. Manish Lalji Dawada as the Resolution Professional vide order dated 18.11.2024 and directed him to file his report under section 99 of the Code within 10 days. This Application has been filed by the RP under Section 99 (1) read with 99 (7) of the Insolvency and Bankruptcy Code, 2016 for placing on record report of RP recommending the admission of the Petition i.e. CP(IB) 807 of 2024 which is annexed with the present Application.

12. The ground(s) for admission of the present application, as recorded in the said RP report, are reproduced in-verbatim as hereinafter:

“The Applicant has duly scrutinized and examined the original petition together with exhibits and supporting documents in light of the provisions of Section 95 r/w Section 99 of the Code and observes as follows:

| <i>Sr.</i> | <i>Provision</i> | <i>Remarks</i> |
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| 1. | <i>(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by applying</i> | <i>The original Petitioner, Abhyudaya Co-Operative Bank Ltd., is a registered multi-state co-operative bank and qualifies as a financial creditor under the Code. The petition has been filed in its name directly under Section 95(1) of the Code through the prescribed form.</i> |
| 2. | <i>(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against— (a) any</i> | <i>NA</i> |

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| | <i>one or more partners of the firm; or (b) the firm.</i> | |
| 3. | <i>(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first-mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.</i> | NA |
| 4. | <i>(4) An application under sub-section (1) accompanied with details and documents relating to— (a) the debts owed by the debtor to the creditor or creditors submitting the application as on the date of application</i> | <i>The Applicant submits that, as per Section 99(3) of the Code, the debt is registered with the Information Utility (NeSL) through Form D – Record of Default, thereby legally barring the</i> |



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| | | <i>Respondent from disputing its validity. The petition also includes sanction letters, disbursement records, bank statements, guarantee deeds, and proof of claim admission in the liquidation of M/s Protocol Marine Services Pvt. Ltd.</i> |
| 5. | <i>(4)(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand.</i> | <i>The demand notice dated 14.03.2024 was duly served upon the Personal Guarantor. The Respondent, through her own email dated 04.12.2024, acknowledged that no payment has been made post-service of the notice.</i> |

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| | | <i>Accordingly, the statutory default period lapsed, and the default is deemed to have occurred.</i> |
| 6. | <i>(4)(c) relevant evidence of such default or non-repayment of debt</i> | <i>The Petitioner has filed on record the demand notice invoking the personal guarantee, letters issued to the Principal Borrower and Guarantor, and the NeSL 'Form D – Record of Default' which cumulatively substantiate the existence and non-payment of the debt.</i> |
| 7. | <i>(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.</i> | <i>The Petitioner has filed an affidavit of service confirming that a complete copy of the petition was served upon the Respondent on 29.01.2024</i> |

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| | | <i>through email and physical dispatch.</i> |
| 8. | <i>(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.</i> | <i>The petition is filed in compliance with the prescribed format under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ('PG-IRP Rules'), and accompanied by the applicable statutory fee.</i> |
| 9. | <i>(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified</i> | <i>The Petitioner has submitted the following documents in support of the claim: 1. Sanction Letters and Facility Agreements; 2. Personal</i> |

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| | | <i>Guarantee Deeds;</i> <i>3. Hypothecation and Mortgage Documents;</i> <i>4. Statement of Accounts and Balance Confirmations;</i> <i>5. NeSL Record of Default (Form D);</i> <i>6. Demand Notices and Correspondence;</i> <i>7. CIRP claim forms and supporting evidence;</i> <i>8. Consent and Appointment documents of the Resolution Professional.</i> |
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Thus, the Applicant most respectfully submits that the petition filed by Abhyudaya Co-Operative Bank Ltd. under Section 95 of the Code satisfies all the mandatory requirements of Section 95 read with Section 99 of the Code, and in the humble opinion of the Applicant deserves to be accepted / admitted.

Findings & Analysis:

13. Heard the learned counsel for the Applicant and perused the record. The Respondent, though represented through counsel, has filed a reply opposing the application and the report of the

Resolution Professional. The matter is accordingly being decided on merits based on the material available on record and the rival contentions.

14. The application under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC) was admitted by this Bench vide order dated 18.11.2024. In terms of the said order, **Mr. Manish Lalji Dawada** was appointed as the **Resolution Professional (RP)** to examine the application and submit a report under Section 99 of the Code.
15. The Resolution Professional has submitted his report on 12.12.2024 recommending **admission** of the present petition. It is noted from the report that the RP issued a notice to the Personal Guarantor under Section 99(2) requiring her to submit any proof of repayment. The Respondent vide her email dated 04.12.2024 categorically admitted that no payments had been made by her after receipt of the demand notice dated 14.03.2024. Thus, the debt remained due and unpaid as on the date of filing.
16. The RP has verified that all requirements under Section 95 and 99 of the IBC and the applicable Rules have been complied with, including :
 - Service of copy of the petition upon the Personal Guarantor;
 - Issuance of demand notice under Rule 7(1);
 - Submission of default documents, personal guarantee deeds, sanction letters, and statement of accounts;
 - Payment of the prescribed statutory fee;

- Confirmation that the Respondent failed to dispute or repay the debt after notice.

17. The RP's report specifically notes that the total amount due and payable by the Personal Guarantor stood at **Rs. 50,23,81,797.97/-** (Rupees Fifty Crore Twenty-Three Lakh Eighty-One Thousand Seven Hundred Ninety-Seven and Ninety-Seven Paise only) as on **29.02.2024**, along with continuing interest. It is further observed that the Respondent executed multiple Deeds of Guarantee between 2017 and 2021 in favour of the Financial Creditor, securing the various credit facilities extended to the Corporate Debtor, M/s Protocol Marine Services Pvt. Ltd.

18. The Respondent has filed a detailed affidavit in reply disputing the RP's findings and has alleged coercive lending, mala fide conduct, and financial overreach on the part of the Financial Creditor. However, it is a settled position in law that the liability of a personal guarantor is co-extensive with that of the principal debtor as per Section 128 of the Indian Contract Act, unless expressly discharged. No material has been placed on record to show that such liability was either extinguished or waived.

19. The clause 2 of the guarantee clearly states that

“The Guarantors agree that the amount hereby guaranteed shall be due and payable by the Guarantors jointly and severally to the Bank two days after demand and without demur merely upon the Bank sending to the Guarantors a demand notice requiring payment of the amount...”

Hence, as per clause 2 of the agreement the guarantees are on demand guarantees so, it can be invoked only after the guarantors raising a demand notice. As a result, the guarantees dated 15.07.2020 and all

other guarantees did not invoke and hence the said petition cannot be admitted.

20. The Financial Creditor has not placed any notice or letter indicating the demand from the Personal Guarantor for payment of debt due from the Corporate Debtor prior to issuance of demand notice dated 14.03.2024. In other words, the Guarantee of the Personal Guarantor came to be invoked pursuant to said demand notice only.
21. The Hon'ble NCLAT in the case of *State Bank of India v. Deepak Kumar Singhania (2025 ibclaw.in 153 NCLAT)*, held that “we are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (1) issued in Form-B to the Guarantor, demanding repayment of the default amount, has to be treated as Notice for invoking guarantee. Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor. Hence, we reject the submission of the Appellant that Notice under Rule 7, sub-rule (1) is a Notice, invoking the guarantee”.
22. Since in this case also the Guarantee was not invoked prior to issuance of demand notice, we are of considered view that present Petition is not maintainable as being premature in the absence of invocation of guarantee prior to issuance of demand notice dated 14.03.2024.
23. Accordingly, the findings and report of the Resolution Professional dated 12.12.2024 under Section 99(1) read with Section 100 of the IBC is rejected. The petition filed by Abhyudaya Co-Op. Bank Ltd. under Section 95 of the IBC against Mrs. Ritadevi Devilal Chapagain is thus found to be pre-mature and accordingly **rejected/dismitted.**

Order:

24. Considering the above facts and circumstances and upon perusal of the documents on record, the C.P. (IB)/807/MB/2024 filed under Section 95 of the IBC, 2016 is hereby **rejected/dismissed as premature.**

25. The Registry is directed to communicate a copy of order to the Resolution Professional immediately after the pronouncement of order, and upload the same on the website within **two** days after the pronouncement of order.

26. Ordered accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

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Sd/-

Justice V. G. Bisht
Member (Judicial)