

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. I**

**I.A (IBC) 1518/KB/2024
AND
I.A (IBC) No 1181 /KB/2024
IN
Company Petition (IB) No. 113/KB/2023**

***An Application under Section 95 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority for Insolvency
Resolution Process of Personal Guarantor to Corporate Debtor)
Rules, 2019***

IN THE MATTER OF:

UCO Bank

...Applicant/ Financial creditor

Versus

Sharmila Khemka

...Personal Guarantor/ Respondent.

Date of Pronouncement: 19.06.2026

Coram:

Smt. Bidisha Banerjee :

Member (Judicial)

Smt. Rekha Kantilal Shah:

Member (Technical)

APPEARANCE:

For the Financial Creditor:

**Mr. Rahul Auddy, Adv.
Mr. Aditya Gooptu, Adv**

For RP:

Ms. Pooja Agarwal, Adv

For Personal guarantor:

**Mr. Shaunak Mitra, Adv.
Mr. Dripto Majumdar, Adv.**

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Mr. Aditya Kanodia, Adv.
Mr. Pratik Dutta, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through hybrid mode.
2. Heard Ld. Counsels for both the parties.
3. This application, being I.A 1518/KB/2024, has been filed by the personal guarantor in the CP (IB) No. 113/KB/2023. This IA seeks the following reliefs:
 - a. CP (IB) No. 113/KB/2023 be dismissed with costs and penalty;
 - b. An order be made staying all further proceedings in CP (IB) No. 113/KB/2023, till the disposal of this application.
 - c. Advertisement interim orders in terms of the prayer (b) above;
 - d. Pass any other order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this instant case.

CP (IB) No. 113/KB/2023

Brief facts

4. The CP (IB) No.113/KB/2023 has been filed by **UCO Bank**, under Section 95 of Insolvency and Bankruptcy Code, 2016, read with Rule 7(2) of the insolvency and bankruptcy (Application to Adjudicating Authority for Personal Insolvency Resolution Process for Personal Guarantor to Corporate Debtor), Rules 2019 for initiation of

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insolvency resolution process against **Sharmila Khemka**, the Personal Guarantor to the Corporate Debtor, **Nandini Impex Private Limited** of Rs **4,79,81,95,798.09 (Rs Four Hundred Seventy Nine Crore Eighty One Lakh Ninety Five Thousand Seven Hundred Ninety Eight And Nine Paise Only)** as on **31.03.2021**.

5. The Hon'ble Adjudicating Authority vide order dated initiated CIRP of the Corporate Debtor.
6. As on 31.03.2021, an amount of **(Rs Four Hundred Seventy Nine Crore Eighty One Lakh Ninety-Five Thousand Seven Hundred Ninety Eight And Nine Paise Only)** is payable by the Personal Guarantor to the Applicant bank together with future interest including penal interest and charges by virtue of the following documents:-
 - a. Agreement of personal guarantee dated 28.09.2012
7. The 13(2) notice under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, act 2022 was issued on 01.10.2020.
8. Notice under section 95 is issued in Form B on 20.12.2022.
9. This Adjudicating Authority vide order dated **09.05.2024** appointed **Mr. Rajesh Kumar Agarwal**, IBBI Registration No. **(IBBI/IPA-001/IP-01023/2017/11722)** as the Resolution Professional and the Resolution Professional was directed to submit a report in terms of section 99 of IBC, 2016 within ten days from the date of order.
10. The Resolution Professional submitted that in accordance with Section 99(2) of the Code, he requested the Personal Guarantor to furnish any document proving repayment of the debt claimed, as

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unpaid, by the Creditor in its application dated **12.04.2023** within 7 days from the date of letter dated **17.05.2024**. The Personal Guarantor replied to the letter dated 17.05.2024 but did not provide any documents making repayment of the debt.

- 11.** The Resolution Professional vide **IA(IBC)-1181/KB/2024** dated 20.06.2024 has filed its report before this Adjudicating Authority and after detailed examination of the Application along with the supporting documents thereof. The Resolution Professional has recommended that the Application filed by the creditor, viz., **UCO Bank** , under Section 95(1) of the Code vide CP (IB) **No. 113/KB/2023** be admitted under Section 100(1) of the Code and the Insolvency Resolution Process be commenced against the Personal Guarantor, viz., **Sharmila Khemka**.
- 12.** In response to the report filed by the Resolution Professional, the Personal Guarantor filed its reply and raised the following objection on the maintainability of the CP (IB) No. 113/KB/2023 being time barred.
- 13.** Ld. Counsel for the Financial Creditor negated the objection raised by the Personal Guarantor that the application is barred by limitation.

I.A 1518/KB/2023

Submissions of the Applicant

- 14.** The applicant is Personal Guarantor for the loan facilities availed from the Respondent No 1 i.e UCO Bank by **Nandini Impex Private Limited (CD)**. **The CD was admitted into Corporate Insolvency Resolution Process, vide order dated 20.09.2022 by this Adjudicating Authority.**

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- 15.** Respondent No 1, in the Notice issued under Rule 7 of The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 has mentioned the date default as 30.06.2012 and in the CP (IB) No. 113/KB/2023 the date of default is mentioned as 30.09.2012. It is evident that Respondent No 1 is not sure of the date of default. Hence the CP (IB) No. 113/KB/2023 is not maintainable.
- 16.** Due to default in payment, the loan account of the CD was classified as Non-Performing Asset (“NPA”) on 30.09.2012 and the Respondent No 1 has issued demand notice on 20.12.2022 under Rule (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. Thus, the demand notice was issued 10 years after the date of NPA. Hence, the CP (IB) No. 113/KB/2023 is barred by limitation.

Submissions of the Respondent No.1

- 17.** Respondent No 1 submits that there is no anomaly in the date of default. The CD defaulted in making payment on 30.06.2022 and after 3 months, the CD was classified as NPA on 30.09.2012.
- 18.** Respondent No 1 submits that the limitation starts from the date of invocation of Personal Guarantee. The Personal Guarantee was invoked by issuance of 13(2) Demand Notice under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, act 2022 (“SARFAESI”) on 01.10.2020 and the CP (IB) No.113/KB/2023 was filed on 12.04.2023. The CP (IB) No.

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113/KB/2023 was filed within 3 years from the issuance of demand notice under 13(2) of SARFAESI. Hence, it is within limitation.

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19. The report filed by the Resolution Professional is taken on record.

ANALYSIS AND FINDING

20. We have heard the learned counsel and perused the record. From the submission of learned counsel for the parties and materials on record following issues arise for consideration:

- I. Whether Notice issued under section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, act 2022 is invocation of guarantee?

ISSUE NO. I

21. The Respondent is a personal guarantor for the loan facilities availed from the applicant by **Nandini Impex Private Limited (CD)**. The CD was admitted into Corporate Insolvency Resolution Process under section 7 of the IBC 2016 vide order of this Tribunal dated 20.09.2022.

22. The first requirement of filing the application under section 95 of the IBC is to ensure that the guarantee executed by the Personal Guarantor to CD has been invoked by the creditor and remains unpaid in full or part then only the application can be filed against such guarantor. Therefore, it is essential to examine whether the guarantee issued by the Respondent herein has been invoked by the guarantor or not.

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- 23.** The mode of invocation of the guarantee depends upon the nature of the Guarantee Contract. At this stage, it would be apposite to refer to Clauses 1, and 14 of the Guarantee Agreements (as reproduced below):

“1. My/our liability under the presents is a continuing one for all sums.....”

*“14 A **demand made in writing shall be deemed** to have been duly given to me/us or my/our heirs or assigns by leaving the same at my/our last known address recorded with the bank and shall be effectual notwithstanding any change of address or notwithstanding notice thereof to the Bank and such demand if sent by post shall be deemed to be received by me/us or my/our heirs or assigns 24 hours posting thereof and shall be sufficient if signed by any officer by the bank and in providing such service it shall be sufficient to prove that the letter contained the demand was properly addressed and put into the post.”*

- 24.** From the language of the guarantee agreement, it is clear that the mode of invocation of the guarantee envisaged under the guarantee contract is by way of demand made by the Bank.
- 25.** Ld. Counsel for the Applicant has submitted that the guarantee was invoked by way of notice dated 01.10.2020 under Section 13(2) of the SARFAESI Act. By looking at the notice dated 01.10.2020, it is found that the applicant has clearly asked the personal guarantor to discharge her liability within 60 days from the date of this notice and the applicant’s clear intention to initiate any nature of legal proceedings. The relevant extract of the notice is reproduced herein.

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“.....to discharge in full your liabilities stated hereunder to the bank within 60 days from the date of his notice.”

“This notice is without prejudice to the bank’s right to initiate such other actions or legal proceedings as it deems necessary under any other applicable provisions of law.”

- 26.** From the language of the 13(2) notice, it is clear that the applicant can initiate any legal proceeding against the personal guarantor which amounts to invocation of guarantee.
- 27.** In a recent decision rendered on 07.01.2026 the Hon’ble Principal Bench of NCLAT in **Ujwal Gupta Vs. Union Bank of India** noted and found as follows:
- (a) In CA (AT) (Ins) No.961 of 2022, **Amanjyot Singh vs. Navneet Kumar Jain**, Resolution Professional & Ors. having noted that “although after sale of the mortgaged asset, part of the facility was realized, but no steps have been taken by the Bank against the Appellant for recovery of any dues”, “the notice, which is the basis of the Application, was issued on 04.10.2013, and that “nine years have been passed from issuance of the notice and no steps have been taken by the Bank for recovery of any amount from the Appellant”, Hon’ble NCLAT held as follows:

“12. We, thus, are satisfied that foundation which was laid down by the Appellant for initiating the CIRP against the Appellant, was not sufficient to admit Section 94 Application and initiate the CIRP against the Appellant. We may further notice that

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Section 10 Application against the Corporate Debtor has already been admitted and CIRP against the Corporate Debtor had been initiated. The case taken up by the Bank being categorical and clear that no steps have been taken by the Bank against the Appellant, there is no cause for the Appellant to pray for initiation of CIRP against the Appellant – the Personal Guarantor. We, thus, do not find any good ground to interfere with the impugned order in this Appeal. The Appeal is accordingly dismissed. No costs.”

(b) In CA (AT) (Ins) Nos. 1702 of 2024, 1711 of 2024, 1712 of 2024, **Mavjibhai Nagarbhai Patel vs. State Bank of India and Anr., Jayantibhai Nagarbhai Patel vs. State Bank of India and Anr., Narayanbhai N. Patel vs. State Bank of India and Anr.**, Hon’ble Appellate Tribunal had noted that:

“16. The liability of the guarantor has to be read from the Deed of Guarantee. xxxxx “It is clear from the reading of the clauses in the Deed of Guarantee that guarantee was given by the Personal Guarantor in unequivocal terms and the guarantee amount was to be paid by the guarantor once the guarantee was invoked.” “17. When we look at the specific Clauses of the Deed of Guarantee, it clearly states that the guarantee was in the nature of a continuing guarantee.” xxxxxxxx “The Section 13(2) Notice which was sent to the Corporate Debtor was also forwarded to the Guarantor with the specific

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demand to make payment of the amount mentioned in the notice in terms of the guarantee. This Section 13(2) Notice was indisputably also sent to the Personal Guarantors separately and independently. When we see the Section 13(2) notice under SARFAESI Act as placed at pages 549 to 551 of Appeal Paper Book (“APB” in short) we find that there is clear indication of the names of all the Personal Guarantors therein which includes the present Appellant (and also the other two Appellants whose appeals are also under consideration before us).”

- (c) The Hon’ble Appellate Tribunal also noted the clear intention of the bank to initiate any nature of legal proceedings as evident from the following notice :

*“Copy of this notice to personal guarantor who are liable to pay the aforesaid outstanding amount. This notice is **without prejudice to the Bank’s right to initiate such other actions or legal proceedings as it deems necessary under any other applicable provisions of Law.**”*

Having noted the above Hon’ble Tribunal held that:

“20. Since the guarantee deed specifically mentioned that the guarantee was in the nature of an on-demand guarantee, the default was to arise on the part of the Guarantor only when the Demand Notice was issued as contemplated in the Deed of Guarantee. Thus, the period of limitation of the Personal Guarantor was to commence once the demand was made on the Guarantor by the

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Respondent No.1 Bank. Hence, the Notice dated 04.06.2021 issued by the Respondent No.1 Bank to the Personal Guarantor has to be treated to be Notice on Demand as Contemplated in the Deed of Guarantee.”

- (d) **Hon’ble Appellate Tribunal Further considered the decision in CA (AT) (Ins) No. 1609 of 2024, Shantanu Prakash vs. State Bank of India and Anr.** where it had noted and held as under:

“while notice was issued under Section 13(2) of the SARFAESI Act, which has also specifically called upon the Appellant to discharge in full the borrower liability stated there in within 60 days of the notice. Thus, the notice fulfils all the condition stipulated under personal guarantee and can be treated as valid invocation. On this issue, the Adjudicating Authority has also held that the demand notice issued by the Respondent No.1 under Rule 7(1) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 as valid. Thus, we do not find any error in the Impugned error in the Impugned Order on this account.”

- (e) Hon’ble Appellate Tribunal in **Ujwal Gupta vs. Union Bank of India** while considering the ratio of CA (AT) (Ins) No. 191 of 2025, **State Bank of India vs. Mr. Deepak Kumar Singhania**, as discussed above, found that:

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“the factual matrix of this case, however, is different than the facts of the instant case as in this case notice was issued under Rule 7(1) in Form-B and it was being impressed to be taken as the notice of invocation of guarantee, which is not a case in the case at hand.” 27. Thus, in our considered opinion, it was a crystal-clear communication not only to the Appellant but to all the addressees to discharge their liability with regard to the credit facilities extended to CD by the Financial Creditor and there appears no ambiguity in this. Since the appellant has extended guarantee by executing a deed and the principal borrower/CD failed to pay the amount of credit facilities extended by the Financial Creditor and the liability of the principal borrower and guarantor is coextensive, this demand notice was sufficient communication to the appellant to discharge his liability under the guarantee deed towards the credit facility extended by the creditor to the CD and is sufficient invocation of guarantee.”

*In the above backdrop it also noted that Hon’ble NCLAT in **Asha Basantilal Surana (Supra)**, which is a three member’s decision, after considering **Amanjyot Singh (Supra)** and **Mavjibhai Nagarbhai Patel (Supra)** clearly holds that “in a case where notice under Section 13(2) makes a demand as per the guarantee agreement between the parties, the notice has to be treated as a notice for invocation of bank guarantee.” The Appellate Tribunal in the above case has also distinguished the law laid down earlier in **Amanjyot Singh (Supra)**, as case confined to its own*

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*facts, by observing in para 12 of the judgment, that the dismissal of the appeal in **Amanjyot Singh** case was on the facts of the said case and has no application in the facts of the case under scrutiny and also that the invocation of personal guarantee has to be in accordance with the terms of the guarantee agreement. We reproduce the para no. 12 of the aforesaid judgment (**Asha Basantilal Surana**) (**Supra**) for convenience herein below:-*

“12. Thus, the dismissal of the Appeal in the Amanjyot Singh’s case was on the facts of the said case and has no application in the facts of the present case. The invocation of personal guarantee has to be in accordance with the terms of the Guarantee Agreement which is a settled law. Clause 7 of the Guarantee Agreement does not require any particular mode and manner of the demand notice. When demand notice is issued against the personal guarantor asking the personal guarantor to discharge its liabilities, the guarantee stands invoked. Whether notice under Section 13(2) in a particular case invoked the guarantee or not depends on the words and intent of the notice. For finding out as to whether Notice under Section 13(2) invoked the personal guarantee, the letters and words of the Notice has to be looked into to come to any conclusion that whether personal guarantor has been asked to discharge its liabilities or not. In the facts of the present case, we are of the considered opinion that the Notice under Section 13(2) issued by

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the State Bank of India is a clear demand notice from the Appellant to pay the amount of Rs. 28,56,64,336.06/-“

(Emphasis Supplied)

Hon'ble NCLAT in **Ujwal Gupta (supra)** has finally ruled as follows:

“32. Thus, what has been highlighted by the aforesaid judgment is that it would be the terms and conditions of the agreement executed between the parties with regard to the guarantee which would be relevant to assess as to whether the guarantee has been sufficiently invoked or not. Therefore, whether a guarantee may be invoked by giving notice under Section 13(2) of the SARFAESI Act depends on the terms of the guarantee and the content of the notice. If the notice clearly demands payment from the personal guarantor in terms of the guarantee, it can be treated as an invocation of the guarantee. The facts and the wording of the notice are crucial in this determination.”

28. Therefore, in view of the above, we are of the considered opinion that it is a fit case for admission and proceed against the Personal Guarantor to initiate Insolvency Resolution Process. Hence, we admit **C.P.(IB)No.113/KB/2023** filed under the provisions of section 95 of IBC, 2016 and under Section 100 of the IBC, 2016 by following order:

a. Initiate Insolvency Resolution Process against the personal

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guarantor and moratorium in relation to all the debts is declared, from today i.e., the date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes Order on the repayment under Section 114 whichever is earlier as provided under Section 101 of IBC, 2016, during the moratorium period.

- I. Any pending legal action of proceedings in respect of any debt shall be deemed to have been stayed; and
 - II. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
 - III. 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.
- b.** The RP shall act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, prepare list of creditors, and hold regular meeting as directed hereunder:
- (i) In terms of section 102:**
1. The RP shall act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, prepare list of creditors, and hold regular meeting as directed hereunder:
 2. The notice under sub-section (1) shall include—
 - a) Details of the order admitting the application;
 - b) Particulars of the resolution professional with whom the claims are to be registered; and

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c) The last date for submission of claims.

3. The notice shall be—

- a. Published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;
- b. placed on the website of the Adjudicating Authority.

(ii) in terms of section 103:

- (1). The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.
- (2). In addition to the claims referred to in sub-section (1), the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

(iii) In terms of section 104:

- (1) The resolution professional shall, within 30 days from the date of notice prepare a list of creditors on the basis of—
 - (a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;
 - (b) claims received by the resolution professional under section 102.

(iv) In terms of section 105:

The Resolution Professional shall assist the debtor in

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preparing repayment plan containing a proposal to the creditors for restricting of his debts or affairs.

(v) In terms of section 106:

- (1) The Resolution Professional shall submit the repayment plan under Section 105 along with his report, within 21 days from the last date of submission of claims under Section 102.
- (2) Which report shall include:
 - (a) That the repayment plan is in compliance with the provisions of any law for the time being in force;
 - (b) That the repayment plan has a reasonable prospect of being approved and implemented; and
 - (c) Whether there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:
- (3) Meeting of creditors shall be held if necessary, specifying The
 - (a) Date, Time and Place of meeting after consulting the creditors;
 - (b) Within 14 to 28 days from submission of its report;
 - (c) After issuance notice for meeting at least 14 days in advance, to all the creditors mentioned in the list of creditors.

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(vi) In terms of section 107:

- (1) The resolution professional shall issue a notice calling the meeting of the creditors at least fourteen days before the date fixed for such meeting.
 - (2) The resolution professional shall send the notice of the meeting to the list of creditors prepared under section 104.
 - (3) The notice sent under sub-section (1) shall state the address of the Adjudicating Authority to which the repayment plan and report of the resolution professional on the repayment plan has been submitted and shall be accompanied by—
 - (a) a copy of the repayment plan;
 - (b) a copy of the statement of affairs of the debtor;
 - (c) a copy of the said report of the resolution professional; and
 - (d) forms for proxy voting.
 - (4) The proxy voting, including electronic proxy voting shall take place in such manner and form as may be specified.
- c. Further, the Resolution Professional will act in accordance with Sections 108, 109 and 110 to summon creditors, conduct meeting of creditors, allow them voting rights in accordance with voting share assigned to each, and seek approval of repayment plan if any.
- d. The Resolution Professional shall prepare a report of the meeting in accordance with Section 112 and furnish a report to this Adjudicating Authority.
- e. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.

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- 29.** In terms of the above, **I.A (IB) No. 1518/KB/2024 is rejected** and **I.A 1181/KB/2024 (REPORT OF RP) is taken on Record and disposed of.** The main **C.P. (IB) No. 364/KB/2021** filed under Section 95 (1) of the IBC, 2016 is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor.
- 30.** Post the matter on **30.07.2026**, for hearing of the Progress Report.
- 31.** Certified copy of this order, if applied for with the Registry be supplied the parties in compliance with all requisite formalities.

**Rekha Kantilal Shah
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed On 19.06.2026

NKS(LRA)