

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through web based video conferencing platform)

CP (IB) No.156/BB/2020
U/s. 7 of the IBC, 2016
R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Punjab National Bank (International) Limited
1 Moorgate,
London, EC2R 6JH

... Financial Creditor/Petitioner

VERSUS

Gokul Super Speciality Hospital Private Limited,
Amma Temple Road,
Ambalpady NH-17,
Udupi, Karnataka 576 103

... Respondent/Corporate Debtor

Order delivered on: 16th, November 2022

Coram: Hon'ble Mr. Kishore Vemulapalli, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri. Mithilesh Kumar Pandey with
Shri. S.K Ravi
For the Respondent : Shri. A. Murali with
Shri Atul Madhavan

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 4 of the I&B (Application to Adjudicating Authority) Rules 2016, by Punjab National Bank (International) Limited (for brevity 'Financial Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of

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Gokul Super speciality Hospital Private Limited (hereinafter referred as 'Corporate Debtor/Respondent').

2. The Corporate Debtor, namely, Gokul Super Speciality Hospital Private Limited is a Company incorporated on 28.04.2005 with CIN: U85110KA2005PTC036163 having its registered office at Amma Temple Road, Ambalpady NH-17, Udupi, KA 576 103, which falls within the territorial jurisdiction of this Adjudicating Authority. The Authorised Share Capital of the Respondent/Corporate Debtor is Rs.120,000,000/- and the Paid-Up Share Capital is Rs. 113,500,000/-.
3. The facts of the case are discussed below:
The present application has been filed on 04.02.2020 by the Financial Creditor against the Corporate Debtor in respect of the default amount of USD 3,586,397.05/-. (Rs 254634190.55/- @ Rs 71 to a USD) (Rupees Twenty- Five Crore Forty-Six Lakh Thirty-Four Thousand One Hundred Ninety Only) as on 10.12.2019 as per part IV of form No. 1.
4. The Corporate Debtor had executed loan agreements with the Financial Creditor for the purchase of acquiring medical equipment, machineries, furnitures, ambulance etc. and for setting up of the Gokul Super speciality Hospital Private Limited at Udupi. The Petitioner had provided the original facility USD 4.50 MN (INR @ Rs. 31,95,00,000) to the borrower for the Project vide sanction letter dated 04.12.2014 and modified letter of sanction dated 13.01.2015 and also terms and conditions as contained in Loan Documents/Facility Agreement dated 11.02.2015. The Date of disbursement of the Loan is 10.03.2015.
5. It is submitted that various securities were provided by the Corporate Debtor including primary security Exclusive Charge by way of mortgage on 9.80 acres of land along with building to be constructed at an estimated value of USD 4.08 Mn (@ 71 INR 28, 96, 80,000), Hypothecation of all other assets including medical equipments/machines, furniture & fixture, ambulance etc., to be acquired at a value of USD 1.92 Mn (@ 71 INR 13,63,20,000) as per project report. Further, collateral was also created on the personal guarantees of Dr Umesh Prabhu, Dr. Jahnavi Rao, Dr T. Srinivas Rao, Ms Saumya Rao and Mr Pradeep Rao.

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6. The Corporate debtor had agreed to repay the term loan in 27 quarterly instalments with the first instalment falling due on 30.09.2016 and last on 31.03.2023 with a total door to door tenure of eight years six months.
7. It is submitted that the Corporate Debtor has defaulted in making payment as per the repayment schedule. As per the statement of account some payments were made in the year 2016, 2017, 2018 and finally in 2019. Subsequently demand notice dated 17.09.2018 was issued to the Corporate Debtor for repayment of the loan but no payment was made by the Corporate Debtor. Further, invocation notice of personal guarantees dated 17.09.2018 was issued on the Personal Guarantors. It is submitted that the same were not adhered to and the facilities remained unpaid. It is further submitted that the ECB Term Loan of the Corporate Debtor was classified as NPA on 30.06.2017.
8. The dates when payments have were received are as under:

Dates on which payments has been received and balance at that time	Amount Received in that month (USD)
09.06.2015 (986,578.58)	13,421.42
15.09.2015 (999,988.34)	13,468.96
09.12.2015 (1,973,980.78)	26,037.56
09.03.2016 (2,967,408.34)	32,670.00
09.06.2016 (2,954,246.54)	43,173.20
09.09.2016 (2,958,630.00)	41,370.00
29.11.2016 (2,989,699.00)	12,309.00
14.12.2016 (2,943,374.00)	46,325.00
16.12.2016 (2,939,731.00)	48,000.59

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30.03.2017 (2,937,653.75)	37,691.00
31.03.2017 (2,893,699.75)	43,954.00

Details of payment overdue and penal interest as per Part IV of Form I are as follows

Loan No 56000979 (IBAN No.GB63PUNB60950056000979 Detail	Amount in USD
Amount Financed	4,500,000.00
Principal Outstanding	2,902,080.00
Interest for the month	684,317.05
Pending Instalments	All
Total Amount Payable	3,586,397.05

9. On 04.11.2020, the present petition was disposed as withdrawn on the basis of the settlement arrived at by the parties. The relevant portion of the order dated 04.11.2020 is extracted below:

“Since the Company Petition is not yet admitted, and the Petitioner and the Respondent have reached a settlement through a One Time Settlement Offer given by the former and accepted by the latter, subjected to the minor modifications mentioned above, and as may be further, we are inclined to permit the Petitioner to withdraw the instant Company Petition. The Petitioner insists that the withdrawal be permitted with liberty to revive the petition shall have no bearing on the final outcome of the matter, which will depend on the totality of the facts and circumstances of the case, the provisions of the Code and Rules made thereunder, as also keeping in view the objectives of the Code, to the satisfaction of this Adjudicating Authority.

In the result, CP (IB) No. 156/BB/2020, is hereby disposed of as withdrawn. Liberty is granted to the Petitioner to revive this petition if the Corporate Debtor

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- does not adhere to the terms of the One Time Settlement as agreed to be modified/may be modified through mutual agreement. No order as to costs.”*
10. However, a fresh application vide I.A No. 136 of 2021 was filed by the Financial Creditor on 02.03.2021 for reviving of the Company Petition alleging that the Respondent failed to comply with the terms of One-Time Settlement. It was alleged that notices on the present I.A was issued on 06.08.2021 and proof of service were filed. The Counsel for the Respondent appeared on 06.07.2021, but thereafter there was no representation and no reply was filed to the I.A. In the circumstances the said I.A was allowed and disposed off vide order dated 23.11.2021, and the Company Petition was restored to its original file. The relevant portion of the order dated 23.11.2021 is extracted below:

“Alleging that the Respondent/Corporate Debtor failed to comply with the terms of One-Time Settlement, the instant I.A has been filed by the Petitioner in CP.

Though, Mr. Pramod N Kathavi appeared for the Respondent/ Corporate Debtor on 06.07.2021, but thereafter there was no representation for the Respondent/ Corporate Debtor and no reply to the I.A has been filed till date. In pursuant to the order dated 06.08.2021, notices were issued and served on the Respondent/ Corporate Debtor and proof of service there vide Diary No. 2467 dated 24.09.2021 has been filed.

In the circumstances and for the reasons mentioned in the I.A, the same is allowed and accordingly, the CP (IB) No. 156/BB/2020 is restored to its original file. Accordingly, the I.A is disposed of.”

11. Subsequently, matter was listed for hearing on several dates. On 04.01.2022 and 25.01.2022 no one attended on behalf of the respondent; therefore substituted mode of service by newspaper publication was allowed on 22.02.2022. On 24.03.2022 counsel appeared on behalf of the respondent and time was allowed for submission of objections. On 20.04.2022 the case was again adjourned to 09.06.2022 on request. On 09.06.2022 the Learned Counsel for the Respondent again sought adjournment stating that the Corporate Debtor is a hospital and the Respondent was intending to settle the matter. Accordingly it was stated in the order dated 09.06.2022 that if the respondent fail to settle the matter in four weeks, the CP will be decided

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on the basis of records available. However, on 12.07.2022, 05.08.2022 and 14.10.2022 more time was allowed, since during pleadings it was repeatedly mentioned by the Respondent counsel that it was a running hospital and some financing was on the cards for repayment of the debt. However, in spite of availing substantial time and frequent opportunities granted, the Respondent failed to resolve the matter.

12. On 19.10.2022 and earlier, heard Shri Mithilesh Kumar Pandey along with Shri. S.K Ravi, learned counsel appeared for the Petitioner and Shri Atul Madhavan, learned Counsel appeared for the Respondent. This Tribunal directed the Petitioner to file a brief with index of the relevant documents along with page numbers submitted during the pleadings. The above direction was complied vide diary No 4721 dated 04.11.2022.
13. The Respondent Corporate Debtor has failed to make any further submissions during the second round of pleadings; apart from repeated seeking time for fresh settlement, which did not materialize. Accordingly we rely on the pleadings in the first round available on record. The Respondent had filed its statement of objections dated 04.09.2020, by inter alia contending that the Petition is not maintainable and is an abuse of the process of law. It is further submitted that the Corporate Debtor is not insolvent but had assets which were mortgaged to the Bank. The delay in repayment was due to factors beyond the control of the Corporate Debtor such as faulty construction of pillars, flooding, non-availability of sand used for construction and it was further submitted that only 45% construction could be completed when the Financial Creditor stopped release of further loans. The Financial Creditor did not allow restructuring and rescheduling of the loan and the OTS suggested by the Corporate Debtor also did not materialize. It is submitted that the Respondent's attempt to settle the matter has failed due to unreasonable terms offered by the Bank.
14. The Learned Counsel for the Petitioner in his rejoinder filed on 17.09.2020 submitted that a One Time Settlement opportunity was given to the Corporate Debtor to repay an amount of USD 3 Million in lieu of full and final settlement of the dues of the applicant. Further, the above mentioned OTS was cancelled by the Petitioner only because of the Non Responsiveness of the Corporate Debtor. It was further submitted that the Petitioner is willing

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to accept the settlement proposal of the Respondent as offered in its letter dated 10.03.2020, if the Respondent accepts to abide by its commitments before this Tribunal. Sanction letter dated 14.09.2020 of acceptance of OTS proposal submitted by the Corporate Debtor vide letter dated 10.03.2020 was attached along with the Rejoinder. Further it was stated that the sanction was valid till the corporate Debtor made the payment as per repayment schedule mentioned. The Petitioner had further stated that it also reserved the right to revive or restore the present application, file an application for contempt of court proceedings or take any other appropriate action against the Respondent in case of its failure to adhere to the proposed schedule of repayment.

15. It was noted that the Respondent had failed to comply with the OTS terms of payment by instalment offered by the Petitioner above; acceptance of which had led to the disposal of the Petition by this Adjudicating Authority vide order dated 04.11.2020 in the first round. Now again the respondent have done nothing apart from seeking adjournment after restoration of the CP. It is observed that the amount in default as per the Company Petition is USD 3,586,397.05/- (Rs 254634190.55/- @ Rs 71 to a USD) (Rupees Twenty- Five Crore Forty-Six Lakh Thirty-Four Thousand One Hundred Ninety Only) as on 10.12.2019. Hence the Threshold Limit mentioned under Section 4 of the IBC, 2016 is met. The date of disbursement of loan is 10.03.2015. The date of default as per the working computation in Annexure A6 is 31.03.2017, and date of NPA is 30.06.2017. Demand Notice under Section 8 of Insolvency and Bankruptcy Code, 2016 in Form 3 was issued on 17.09.2018. The Company Petition was filed on 04.02.2020. Hence, the Petition is filed well within the Limitation. The Petition is complete and has been filed under proper form. The debt amount is more than Rupees One Lakh and Default of the Corporate Debtor has been established.
16. Accordingly, this Adjudicating Authority is of the considered opinion that sufficient opportunity has been granted to Respondent to settle the matter and there is no reason to deny the Petition filed under section 7 by the ~~Financial~~ Creditor to initiate CIRP against the Corporate Debtor. Therefore, the instant Company Petition bearing CP (IB) No. 156/BB/2020 is admitted and moratorium is declared in terms of Section 14 of the Code. As a necessary

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consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (d) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- (g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- (h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

17. In Part-III of Form No.1, Mr. Rakesh Bothra bearing Registration No. IBBI/IPA-001/IP-P01758/2019-20/12675 has been proposed as Interim Resolution Professional (IRP). Form No.2 Written Communication by the IRP has been filed along with the C.P are found at Page Nos.32-33 of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Rakesh Bothra and there is nothing adverse against him. In view of the above, we appoint Mr. Rakesh Bothra bearing Registration No. IBBI/IPA-001/IP-P01758/2019-20/12675, having registered address at 119-A, 1st

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Floor, Vinay Bhavya Complex, 159, CST Road, Kalina, Santacruz East, Mumbai, Suburban, Maharashtra 400 098, email-ip.rakeshbothra@gmail.com, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

18. The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
19. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
20. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.



(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)



(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)