

IN NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, COURT- III

**Interlocutory Application 3663/2023
In
Company Petition (IB) No. 1902 of 2019**

Under section 60(5) of the Insolvency and Bankruptcy Code, 2016.

**UNION BANK OF INDIA
(Erstwhile CORPORATION BANK)**

Versus

**PRIVILEGE HEALTHCARE
SERVICES PRIVATE LIMITED**

*...Applicant/
Financial Creditor*

*...Respondent/
Corporate Debtor*

In the matter of

UNION BANK OF INDIA
(Erstwhile Corporation Bank)
21, Veena Chambers, Mezzazine
Floor, Dalal Street, Fort,
Mumbai – 400001

...Financial Creditor

Versus

**PRIVILEGE HEALTHCARE
SERVICES PRIVATE LIMITED**

Registered Office No. 1, 2 & 3rd floor,
Dreams Mall LBS Marg, Bhandup,
Mumbai, MH-400078.

Also at
HDIL Towers, 9th Floor,
Anant Kanekar Marg Station Road,
Bandra (East)
Mumbai -400051.

...Corporate Debtor

Order Pronounced on: 28.06.2024

Coram:

**LAKSHMI GURUNG, MEMBER (JUDICIAL)
CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)**

Appearance:

For Applicant Adv. Prakash Shinde a/w Adv. Ruchita Jain i/b MDP
and Partners

For Respondent Adv. Sonia Redkar, a/w Shraddha Nagaonkar i/b
Salar Shetty

Per: MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)

1. M/s UNION BANK OF INDIA (Erstwhile Corporation Bank) ('Applicant'/ **'Financial Creditor/Petitioner'**) has filed the present Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**'IBC'**) for restoration of the Company Petition 1902 of 2019 (**Company Petition**) against M/s Privilege Healthcare Services Private Limited (**'Corporate Debtor/Respondent'**) which was disposed of vide order dated 15.09.2020 of this Tribunal.
2. The reliefs sought are reproduced below:
 - a. *"That this Tribunal may be pleased to revive the captioned Company Petition and take on file and record and;*
 - b. *That this Tribunal may be pleased to place the captioned Company Petition for hearing on any date convenient to this Tribunal;"*
3. **Background Facts in Brief:**
 - 3.1. The Financial Creditor had filed the Company Petition bearing no. 1902/ 2019 against the Corporate Debtor under Section 7 of the IBC for default of an amount of Rs. 31,13,43,904/- (Rupees Thirty-One Crores Thirteen Lacs Forty-Three Thousand Nine Hundred and Four).
 - 3.2. The Financial Creditor had sanctioned a term loan facility of Rs. 28 Crores, to the Corporate Debtor vide sanction letter No. OR/CBB/SP/807/2013-14 dated 20.09.2013. The said sanction letter was renewed /reviewed from time to time. Security documents & deeds of guarantee were executed to secure the said sanctioned loan.
 - 3.3. As the Corporate Debtor failed to adhere to the terms of the Sanction letter and did not make timely payments, its account turned irregular & classified as Non-Performing Asset (**'NPA'**) in the books of the Petitioner on 12.04.2016.

- 3.4. Despite several follow-ups and notices issued to the Respondent, the Respondent did not make payment towards the outstanding loans, therefore the Petitioner moved the DRT vide O.A. No.471/2019, for recovery of the outstanding debts.
- 3.5. During the pendency of the DRT proceedings, the Corporate Debtor proposed to settle the outstanding debt for an amount of Rs. 30.22 Crores which the Financial Creditor approved vide reference OR/GMZ/REC/821/2017-18 dated 08.01.2018.
- 3.6. The Corporate Debtor again failed to pay in the terms of the OTS dated 08.01.2018 and proposed to settle the outstanding debt vide letters dated 18.01.2019 & 05.02.2019 for an amount of Rs. 34.12 Crores towards full and final settlement and also paid an amount of Rs. 5 Crores on 05.02.2019. The OTS was approved vide letter dated 07.02.2019 and the Financial Creditor was to pay the balance by July 2019.
- 3.7. The Corporate Debtor yet again failed to pay according to the OTS dated 07.02.2019. Therefore, the Financial Creditor filed Company Petition bearing No. 1902/2019 under Section 7 on 10.05.2019.
- 3.8. Pursuant thereto, the Respondent offered settlement proposal dated 23.09.2019 and requested to settle the debts for an OTS amount of Rs. 23 Crores after deducting payment of Rs. 2 Crores made on 16.09.2019 & 23.09.2019, payable in nine months.
- 3.9. Meanwhile, order was passed in the captioned Company Petition setting the Respondent *ex-parte* on 04.12.2019 and the Respondent was admitted into Corporate Insolvency Resolution Process (CIRP) on the

same date and Ms. Deepa Kabra Rathi was appointed as IRP who was later replaced by Mr. Shailesh Bhalchandra Desai as the RP vide order dated 09.06.2020.

- 3.10. During the ongoing insolvency proceedings, the Corporate Debtor vide letter dated 29.04.2020 approached the Financial Creditor to consider the OTS proposal due to the pandemic and other difficulties faced by the Corporate Debtor. The OTS proposals dated 07.07.2020 & 12.08.2020 came to be accepted by the Petitioner and in view of the same, the 15th CoC Meeting of the Corporate Debtor was conducted on 19.06.2020 wherein the agenda for withdrawal under Section 12A of IBC was approved by CoC by requisite majority of more than 90%.
- 3.11. Accordingly, the RP filed an I.A. No.1181/2020 under Section 12A of the Code for withdrawal of the Company Petition (**Withdrawal Application**), which was heard and allowed on 15.09.2020 and as a result, the Company Petition was disposed of as compromised/ withdrawn.
- 3.12. The Corporate Debtor had issued post-dated cheques to the Financial Creditor as per the terms of OTS dated 07.07.2020 and 12.08.2020. The Corporate Debtor vide letter dated 20.10.2020 once again requested to restructure the repayment schedule and insisted on replacing old post-dated cheques with new ones as per the revised time line as proposed in the letter dated 20.10.2022. As per the said letter dated 20.10.2022, the Respondent was to make payments till February, 2023. However, the Financial Creditor did not consider proposal of extension of OTS with revised terms.
- 3.13. It is pertinent to note that, the cheques dated 07.12.2020, 07.01.2021 and 07.02.2021 were dishonoured due to insufficient funds. The

Financial Creditor issued Legal Notice dated 24.02.2021 to the Corporate Debtor.

- 3.14. The Corporate Debtor vide letter dated 03.04.2021, requested not to deposit the Cheques as fire broke out in the hospital premises and the hospital was not operational.

Submission by Financial Creditor

4. In view of the conduct and continuous default on part of the Respondent the Petitioner has preferred the present application seeking revival of the Company Petition against the Respondent.
5. It was submitted that all the OTS have failed, the debt of Rs. 26.51 Crore being the principal amount along with interest is due and payable by the Respondent therefore the Company Petition bearing no. 1902/ 2019 deserves to be restored.

Written Submission by the Corporate Debtor:

6. The Corporate Debtor had not filed reply but was heard and liberty was granted to file written submission. The written submission was uploaded on 04.04.2024 and hard copy was tendered across the bar. The submission by the Corporate Debtor, in nutshell are as follows:
- 6.1 In or around 2012, the Respondent purchased part of premises of 3rd Floor, Dreams Mall, Bhandup, Mumbai admeasuring about 6878.42 sq. mts. ("**said Premises**") vide Sale Deed dated 09.02.2012. Subsequent thereto, the Respondent undertook redevelopment of the said premises to make it suitable for running and operating a state-of-the-art Hospital. However, despite extensive redevelopment, the Respondent was unable to start operations of the Hospital at the said premises as the Mall had not been granted an Occupation Certificate.

- 6.2 In or around October 2013, the Respondent approached the Applicant Bank regarding a Financial Facility for smooth operation and running of its business/ Hospital.
- 6.3 Pursuant to the discussions and negotiations between the parties, a Sanction Letter dated 17.10.2013 (**“2013 Sanction Letter”**), the Applicant Bank was pleased to sanction a term loan of Rs. 28,00,00,000/- (Rupees Twenty-Eight Crore Only) to the Respondent (**“Financial Facility”**), on the terms and conditions more particularly recorded therein. This Financial Facility, availed under the 2013 Sanction, came to be revised vide a Sanction Letter dated 19.03.2015 (**“2015 Sanction Letter”**).
- 6.4 The Respondent was servicing the Financial Facility as per the terms. However, despite best efforts, the Respondent could not commence its commercial operations at the said Premises due to lack of requisite permission from the competent authorities. Consequently, around the end of 2015, the Respondent could not service the Financial Facility to the Applicant Bank in a timely manner and Corporate Debtor’s account was declared NPA by the Financial Creditor on 31.03.2016.
- 6.5 It is further submitted by the Corporate Debtor that it faced genuine difficulties and had proposed OTS dated 07.07.2020 for an amount of Rs. 34,00,31,655/-. However, despite Respondent’s best efforts to pay the amounts as agreed in the OTS Letter, the Respondent due to its financial difficulties, failed to repay the same.

FINDINGS

7. We have heard the Id. Counsel on both sides, perused the record and considered the written submissions.
8. The Corporate Debtor has not denied any of the facts stated in the instant company petition. Rather the Corporate Debtor has submitted that despite its efforts to pay the amount as per OTS letters, the Corporate Debtor has failed to repay the same due to financial difficulties.
9. It is an admitted position that the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process (CIRP) vide order dated 04.12.2019 in CP. 1902/ 2019. Thereafter the Company Petition was withdrawn by the Financial Creditor on the strength of the OTS proposals dated 07.07.2020 & 12.08.2020.
10. It is further noted that while accepting the OTS Scheme, the Financial Creditor has mentioned in the acceptance letter dated 07.07.2020 as follows:

“6. In case of delay/ default in payment as per the OTS terms and conditions, the concession/ OTS sanctioned shall stand withdrawn/ cancelled automatically and the Bank will be entitled to recover the entire dues with up to date interest. The Bank shall be free to initiate all recovery steps including but not limited to legal remedies/ NCLT routes.”
11. In view of the facts and circumstances of the present case, it is a fit case for restoration of C.P. No. 1902/ MB/2019 which is hereby restored to the file of this Court.
12. List C.P. 1902/2019 for hearing on **15.07.2024**.

13. In result, I.A. 3663/MB-III/ 2023 is **allowed** and **stands disposed of**.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)