

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**



C.P.(IB)-1902 (MB)/C-III/2019

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

In the matter of

Union Bank of India

(Erstwhile Corporation Bank)

Having Branch Office at:

21, Veena Chambers, Mezzazine Floor,
Dalal Street, Fort, Mumbai- 400001.

....Financial Creditor/Petitioner

Vs

**Privilege Healthcare Services Private
Limited**

Having Registered Office at:

Office No.1,2,3, 3rd Floor, Dreams Mall
MGS Marg, Bhadup, Mumbai- 400078.

.... Corporate Debtor/Respondent

Order Pronounced on:18.02.2025



CORAM:

Ms. Lakshmi Gurung, Member (Judicial)

Sh. Charanjeet Singh Gulati Member (Technical)

APPEARANCES:

For the Financial Creditor:

Adv.Prakash Shinde, Adv.Ruchita
Jain i/b. MDP Legal

For the Corporate Debtor:

Sr. Counsel, Mr. Arvind Nayyar, Adv.
Ashish Verma, Adv. Debopai
Moulik, Adv.Sagar Shetty, Adv. Vijay
Singh, Adv.Krushika Vdeshi, Aprajita
Mahto i/b. Sagar Shetty.

PER: SH. CHARANJEET SINGH GULATI MEMBER (TECHNICAL)

1. The Present Company Petition (IB) 1902 (MB)/2019 is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC/Code**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Union Bank of India (**Erstwhile Corporation Bank**) (“**Financial Creditor/Petitioner**”) for initiating Corporate Insolvency Resolution Process (“**CIRP**”) against M/s. Privilege Healthcare Services Private Limited (“**Corporate Debtor/Respondent**”) for a default amount of **Rs. 30,19,13,435.20/-** (Rupees Thirty Crores, Nineteen Lakhs, Thirteen Thousand, Four Hundred and Thirty-Five and Twenty paise only) as on 31.03.2019.

Brief Facts:

2. The Petitioner vide its sanction letter dated 20.09.2013 sanctioned term loan facility of Rs.28,00,00,000/- and Import/ Inland LC/ Buyers Credit as sublimit of Rs.77,00,000/- to the Corporate Debtor. The said sanction



facilities were renewed /reviewed from time to time.

3. The Corporate Debtor executed various loan and security documents which are as follows:
 - a) Copy of Agreement of Term Loan dated 01.11.2013.
 - b) Copy of Guarantee Agreement dated 01.11.2013
 - c) Common Deed of Hypothecation dated 01.11.2013
 - d) Counter Guarantee dated 01.11.2013
 - e) Interse Agreement dated 01.11.2013
 - f) Documents in respect of equitable mortgage.
 - g) Acknowledgement of Debt and Liability 08.07.2016
4. Further the Corporate Debtor failed to adhere to the terms of the Sanction letter dated 20.09.2013 and did not make timely payments, therefore its account was classified as Non-Performing Asset ('NPA') on 12.04.2016.
5. Despite several follow-ups and notices issued to the Corporate Debtor, the Corporate Debtor did not make payment towards the outstanding loan, therefore the Financial Creditor moved the DRT vide O.A. No.471/2019, for recovery of the outstanding debts
6. 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 its letter dated 08.01.2018.
7. 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 its 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.
8. The OTS was approved vide letter dated 07.02.2019 and the Financial



Creditor was to pay the balance by July 2019. The Corporate Debtor again failed to pay according to the OTS dated 07.02.2019.

9. Therefore, on 10.05.2019, the Financial Creditor filed Company Petition bearing No. 1902/2019 under Section 7 of the IBC against the Corporate Debtor for initiation of CIRP.
10. Pursuant thereto, the Corporate Debtor 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 and 23.09.2019, payable in nine months.
11. Meanwhile, vide order dated 04.12.2019, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) wherein Ms. Deepa Kabra Rathi was appointed as Interim Resolution Professional (IRP) who was later replaced by Mr. Shailesh Bhalchandra Desai as the Resolution Professional (RP) vide order dated 09.06.2020.
12. During the ongoing insolvency proceedings, the Corporate Debtor vide its 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 Financial Creditor and in view of the same, the 15th CoC Meeting of the Corporate Debtor was conducted on 19.06.2020 wherein agenda for withdrawal under Section 12 A was approved by 100% voting.
13. Accordingly, the Resolution Professional filed an I.A. No.1181/2020 under Section 12A of the IB Code for withdrawal of the said Company Petition (Withdrawal Application).
14. The said application was heard and allowed on 15.09.2020 as a result, the Company Petition was disposed of as withdrawn.
15. 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. Thereafter, the Corporate Debtor vide its 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 proposed in the letter dated 20.10.2022. As per the said letter dated 20.10.2022, the Corporate Debtor was to make payments till February, 2023. However, the Financial Creditor did not consider proposal of extension of OTS with revised terms.

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

17. 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 of the Corporate Debtor was not operational.

18. In view of the conduct and continuous default, breach on part of the Corporate Debtor, financial Creditor filed IA No.3663 of 2023 seeking revival of the Company Petition against the Corporate Debtor, on the grounds that OTS had failed, therefore the debt of Rs.26.51 Crore being the principal amount along with interest is due and payable by the Corporate Debtor.

19. This Tribunal vide its order dated 28.06.2024 allowed IA No.3663 of 2023 and restored C.P. No.1902/MB/2019.

20. The financial creditor has relied upon following case laws to continue the CIRP of the Corporate Debtor from the stage of withdrawal

- i. M/s. Omega Corrugators Pvt. Ltd. vs. Apex Consumer Appliances Private Limited - Order passed by NCLT Mumbai***
- ii. I.A. No. 1407/2022 in C.P. No. (IB) 3456/MB/C-III/2019 dated 21.05.2024 (Relevant Paras 17 to 20, 30, 31)***
- iii. ICICI Bank Limited vs. OPTO Circuits (India) Limited and Ors. - Order passed by NCLAT Chennai Company Appeal No. 146/2021 dated 28.04.2022 (Relevant Paras 22, 23, 24)***



- iv. *Sree Bhadra Parks and Resorts Ltd. Vs. Sri. Ramani Resorts and Hotels Pvt. Ltd. - Order passed by NCLAT Chennai Company Appeal No. 06/2021 dated 09/04/2021 (Relevant Paras 49, 56 & 57).***

Reply by the Corporate Debtor:

21. The Corporate Debtor has filed a reply dated 15.07.2019 to the Company Petition. This tribunal vide its order dated 06.09.2024 granted liberty to the Corporate debtor to file reply to the Restored Company Petition. Therefore, both the replies are clubbed together for the sake of brevity.
22. The Petition has been filed by the Financial Creditor only on the basis of Authority Letter dated 23.04.2019. A Petition cannot be filed only on the basis of Authority Letter. The Petition is not maintainable since the same is not signed, verified and filed by a competent authority of the Financial Creditor.
23. The Financial Creditor has based the alleged debt on Loan Agreement dated 01.11.2013 between the Financial Creditor and Respondent. The loan agreement is merely printed on a stamp paper of Rs.200/- and no stamp duty has been paid on the said loan agreement as required under the Maharashtra Stamp Act, 1958.
24. The Financial Creditor is also relied upon Guarantee Agreement dated 01.11.2013, one Dr. Nikita Tehan and Dr. Hafeez Rehman Padiyath Abdul and Respondent. The said agreement is merely printed on a stamp paper of Rs.300/-and no stamp duty has been paid on the said Guarantee Agreement Deed as required under the Maharashtra Stamp Act, 1958.
25. Memorandum of Entry dated 11.11.2013, Memorandum of Deposit of Title deeds dated 11.04.2011, Memorandum of deposit dated 20.07.2012 and 2.05.2013 have not been registered.
26. The Corporate Debtor herein has not received any letter dated 24.01.2017 recalling the alleged credit facilities as claimed by the Petitioner



27. On 25/26 March 2021, a fire broke out at Shop No. 140, Upper Ground Floor of the Mall, where the Corporate Debtor's Hospital was situated. On account of aforesaid fire, all machinery, stocks, equipment, and fixtures of the Corporate Debtor hospital was destroyed causing excessive damage and loss to the Corporate Debtor.
28. Immediately, after the fire incident, in June 2021, the Corporate Debtor approached the Petitioner Bank requesting a copy of the insurance documents as most of the equipment at the Corporate Debtor Hospital was insured by the Financial Creditor as per the Loan Sanction Documents. However, despite numerous requests, the Financial Creditor failed to provide the relevant insurance documents.
29. Further the Corporate Debtor got to know that Financial Creditor did not get the hypothecated property and types of machinery, stocks, equipment, and fixtures at the Property insured. It is pertinent to note that the Financial Creditor was required to keep the mortgaged premises that were hypothecated insured for full value and against all risk. The Financial Creditor now stands to incur expenses of more than Rs. 140,00,00,000/- for reinstatement of the mortgaged Premises and the hypothecated assets, on account of the fire incident. Thus, the Corporate Debtor was constrained to file a Suit for damages being Commercial Suit No. 199 of 2021, which is pending before the Hon'ble High Court of Bombay.
30. The Corporate Debtor does not possess all the aforesaid records and documentation pertaining to the Financial Facility. Moreover, the documents, in possession of the Corporate Debtor are not legible and cannot be relied upon.
31. A certificate of registration was issued to Sunrise Hospital under Section 5 of the Maharashtra (Bombay) Nursing Homes Registration Act, 1949. Pursuant to such certification, the Corporate Debtor Hospital commenced providing medical facilities to thousands of patients. However, despite Corporate Debtor authentic efforts to pay the amounts as agreed in the OTS Letter, the Corporate Debtor due to its certain temporary financial



difficulties & premises catching fire failed to repay the same

32. Rule (48) of NCLT Rules permits restoration of an application dismissed for default or decided on merits in the absence of the applicant; and, Rule (49) permits restoration of an application decided ex-parte. There is no provision available to grant liberty to restore the finally disposed of petition as settled out of court or as withdrawn.
33. A perusal of the revival order would indicate that the period of limitation has not been extended by this tribunal at the time of revival of the captioned Petition. Further, even the revival does not revive the contractual engagement of the parties which not relate to the settlement terms 13 and not the original financial facilities.
34. The cause of action of the company petition does not survive in light of the settlement terms and consequent order of withdrawal. It is trite law that a Company Petition cannot be revived after the same has been withdrawn under S. 12A of the Code, 2016 unless the same is specifically provided for in the Order permitting withdrawal or forms a part of the settlement terms. Thus, in the absence of a specific provision this Tribunal could not have permitted the revival of the present Company Petition.
35. The ***Hon'ble NCLAT in SRLK Enterprises LLP vs. Jalan Transolutions (India) Ltd. 2021 SCC OnLine NCLAT 581*** held that it is trite law that in absence of a specific revival clause precludes the restoration of the petition. ***The Hon'ble NCLAT in Amrit Kumar Agarwal v. Tempo Appliances Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 1005 of 2020]*** held that proceedings settled without retaining revival rights attains finality once the same has been settled.
36. ***The Hon'ble Supreme Court in Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. [(2021) 3 SCC 475]*** held that obligations arising from a settlement agreement do not constitute "financial debt" under Section 5(8) of the IBC, as there is no disbursal for consideration of time value of money.



Additional Affidavit dated 02.08.2024 by the Financial Creditor:

37. The Financial Creditor vide additional Affidavit dated 02.08.2024, has provided new name of the Resolution Professional i.e. Mr. Shreyansh Jain, to enable to continue and complete the CIRP process of the Corporate Debtor as Company Petition was restored vide order dated 28.06.2024 of this Tribunal.
38. In the additional Affidavit dated 02.08.2024 it was also submitted that vide order dated 28.06.2024 when this Tribunal revived Company Petition filed against the Corporate Debtor this Tribunal in Para 6.4 & 6.5 of its order has duly stated that the Corporate Debtor has not disputed and /or denied the outstanding liability due and payable to the Financial Creditor and has admitted that there is debt and occurrence of default. Thus it is fit to commence CIRP against the Corporate Debtor.

Analysis & Findings

39. Heard the Ld. counsel for the parties and perused the records.
40. We note that Petitioner vide its sanction letter dated 20.09.2013 sanctioned term loan facility of Rs.28,00,00,000/- and Import/ Inland LC/ Buyers Credit as sublimit of Rs.77,00,000/- to the Corporate Debtor. These credit facilities were renewed from time to time.
41. Further the Corporate Debtor failed to make timely payments, therefore its account was classified as ('NPA') on 12.04.2016.
42. Subsequently the Financial Creditor moved the DRT vide O.A. No.471/2019, for recovery of the outstanding debts. During the pendency of the DRT proceedings, the Corporate Debtor proposed to settle the outstanding debt for a total amount of Rs. 30.22 Crores which was approved by the Financial Creditor vide its letter dated 08.01.2018. However, the Corporate Debtor failed to repay the same. The Corporate Debtor vide its letters dated 18.01.2019 & 05.02.2019 once again proposed to make OTS



payment of Rs.34.12 Crores towards full and final settlement debt but failed to make payment, therefore the Financial Creditor filed Company Petition bearing No. 1902/2019 under Section 7 of the IBC to initiate Insolvency Proceedings against the Corporate Debtor. This Tribunal vide its order dated 04.12.2019 admitted the Corporate Debtor into CIRP wherein Ms. Deepa Kabra Rathi was appointed as IRP who was later replaced by Mr. Shailesh Bhalchandra Desai as RP vide order dated 09.06.2020.

43. During the ongoing insolvency proceedings, the Corporate Debtor once again proposed to make OTS payment to the Financial Creditor. Pursuant thereto the Petitioner in its 5th CoC Meeting approved withdrawal of CIRP with 100% majority. Accordingly, the Financial Creditor filed an Application for withdrawal under Section 12 A.
44. Further the Corporate Debtor submitted post-dated cheques which were dishonoured, therefore, the Petitioner again filed IA No.3663 of 2023 seeking revival of the Company Petition against the Corporate Debtor which was allowed by the Tribunal vide its order dated 28.06.2024 and the same was restored.
45. It is pertinent to note that the Corporate Debtor has multiple times given assurance to make OTS payment to the Financial Creditor, however, has failed to repay the same even after withdrawal of the Company Petition.
46. Further the Corporate Debtor in its reply has duly acknowledged 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.
47. It is also observed that despite issuing an earlier Demand Notice dated 01.06.2016 and legal notice dated 24.02.2021 recalling to pay amounts due to the Financial Creditor, the Corporate Debtor has failed to make payment.
48. We place reliance on the judgement of NCLAT ***Tejas Khandhar vs Bank of Baroda Company Appeal (AT) (Insolvency) 371 of 2020 decided on 12.07.2022*** which states that OTS proposal amounts to acknowledgement of Debt:



14. Keeping in view the aforementioned ratio laid down by the Hon'ble Apex Court in 'Dena Bank (now Bank of Baroda)' (Supra), this Tribunal is of the considered view that the OTS proposal dated 01.08.2016 and the subsequent one on 27.03.2018 falls within the definition of the ambit of 'acknowledgement of debt' as envisaged under Section 18 of the Limitation Act, 1963 and is therefore squarely covered by the aforementioned Judgment.

49. Now we shall move to decide the contentions raised by the Corporate Debtor. The Corporate Debtor has contented as follows:

- i. On Loan Agreement dated 15.11.2013 and letter of Guarantee dated 15.11.2023 sufficient stamp duty has been not paid.
- ii. Rule (48) permits restoration of an application dismissed for default or decided on merits in the absence of the applicant; and, Rule (49) permits restoration of an application decided ex-parte.
- iii. Limitation has not been extended by this tribunal at the time of revival of the Captioned Petition and that cause of action does not survive in light of settlement terms consequent to withdrawal order therefore this Tribunal could not have permitted revival of the present Company Petition.

50. In regards with the first contention we say that Hon'ble **Supreme Court in N. N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd. [Curative Petition (C) No. 44 of 2023 in Review Petition (C) No. 704 of 2021 in Civil Appeal No. 1599 of 2020]** wherein it is observed as follows:

“Section 35 of the Stamp Act is unambiguous. It stipulates, “No instrument chargeable with duty shall be admitted in evidence...” The term “admitted in evidence” refers to the admissibility of the instrument. Sub-section (2) of Section 42, too, states that an instrument in respect of which stamp-duty is paid and which is endorsed as such will be “admissible in




*evidence.” **The effect of not paying duty or paying an inadequate amount renders an instrument inadmissible and not void. Non-stamping or improper stamping does not result in the instrument becoming invalid. The Stamp Act does not render such an instrument void. The non-payment of stamp duty is accurately characterized as a curable defect. The Stamp Act itself provides for how the defect may be cured and sets out a detailed procedure for it. It bears mentioning that there is no procedure by which a void agreement can be “cured”.***

(Emphasis Provided)

51. The above judgment of Hon’ble Supreme Court is direct answer to the objection raised by the corporate debtor. Inadequate stamping of the Agreement or Guarantee deed does not render it to be bad or illegal or void but merely not admissible in evidence.
52. In regards to second contention that no statutory power vested with the Tribunal to allow a restoration application since only Rules 48 and 49 of the NCLT Rules, 2016 permit restoration of application which was either dismissed for default or decided in the absence of the Petitioner, if decided *ex-parte*. In this regards it is stated that the Adjudicating Authority by invoking its power granted under Rule 11 of the NCLT Rules, 2016, can restore the Company Petition.
53. We rely on the judgement on **Krishan Kumar Mittal vs. GRJ Distributors & Developers Pvt. Ltd. [Company Appeal (AT) (Ins) No. 579 of 2019]** decided on 16.03.2023, the Hon’ble NCLAT held that:

“16. The issue involved in this case is as to whether an application for restoration or revival of appeal is maintainable in terms of Rule 11 of the Rules if the case set up by the Financial Creditor/Operational Creditor before this Tribunal or




Adjudicating Authority is terminated on account of a settlement or a memorandum of understanding by the Corporate Debtor and who ultimately commits a breach?

17. Needless to mention that once the application, either filed under Section 7, 9 or 10 is admitted, the CIRP is initiated and moratorium is imposed, the Corporate Debtor would definitely try to wriggle out of the proceedings of CIRP in one way or other. One of the ways which has been chosen by the Corporate Debtor, even after, the admission of the application filed by the Operational Creditor is by entering into a memorandum of understanding. The Operational Creditor who is only interested in his dues, therefore, agrees to the terms and conditions with a legitimate expectation that the Corporate Debtor would definitely honour his words not only recorded in writing and signed but also made part of the court record. What would happen if such a Corporate Debtor makes a default deliberately or may be innocently and then contest such an application filed by the Financial Creditor/Operational Creditor for revival of the CIRP proceedings?

18. In order to deal with such an exigency, Rule 11 in the NCLT Rules has been provided which is akin to Section 151 of the CPC. Rule 11 is reproduced as under: —

“11. Inherent powers—Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal”

19. It is pertinent to mention that the inherent powers are provided in the Rules to use when there is no provision either



in the Code or Regulations and Rule 11 specifically says that the Tribunal has the power to make such orders which are necessary to meet the ends of justice and to prevent the abuse of the process of the Tribunal. We ask ourselves, the kind of behaviour of the Corporate Debtor in not honouring its memorandum of understanding is not an abuse of the process of the Tribunal because on the showing of the Corporate Debtor that they would honour their commitment and make the payment etc. the proceedings initiated by the Financial Creditor/Operational Creditor are terminated.

20. In our considered opinion, this provision is made only for this purpose to avoid a cake walk victory to the unscrupulous Corporate Debtors who would not honour their commitments which is entered into writing and to cheat the innocent and gullible Financial Creditors/Operational Creditors.

21. In our considered opinion the decision rendered by this Tribunal in the case of Sree Bhadra Parks and Resorts Ltd. (Supra) squarely covers this issue because the Tribunal has taken into consideration Rule 11 for the purpose of taking such steps for the purpose of saving the interest of the Financial Creditors/Operational Creditors. Whereas the decision in the case of SRLK Enterprises LLP (Supra) in which there is no reference to Rule 11 of the Rules and nothing has been observed about such a situation which has arisen because of the breach of commitment by the Respondent is in our opinion a judgment per incuriam.

22. In view of the aforesaid facts and circumstances, the restoration application is thus allowed and the proceedings in CA (AT) (Ins.) No. 579 of 2019 are hereby revived.”



54. Further the I.A.3663 of 2023 has been allowed by this tribunal vide a separate order dated 28.06.2020 and which has not been challenged and therefore, the contention that the Petition filed could not have been restored, cannot be raised before us now.
55. In regards to the third issue, we note that the present Petition is not a fresh Petition filed by the Petitioner and is merely a revival of the original Petition dated 09.05.2019 to initiate CIRP against the Corporate Debtor. The Original petition has been filed within limitation, hence, the question of tribunal extending limitation is out of context as limitation can neither be extended by this Tribunal nor has been done.
56. We further note that the Corporate Debtor has relied on two cases ie. ***Hon'ble NCLAT in SRLK Enterprises LLP vs. Jalan Transolutions (India) Ltd. 2021 SCC OnLine NCLAT 581*** wherein it was held that it is trite law that in absence of a specific revival clause precludes the restoration of the petition and ***The Hon'ble NCLAT in Amrit Kumar Agarwal v. Tempo Appliances Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 1005 of 2020]*** wherein it was held that proceedings settled without retaining revival rights attains finality once the same has been settled.
57. In regards to the above cases of we note that there is a specific clause given in the acceptance letter dated 07.07.2020 which gives the Financial Creditor to initiate Recovery proceedings. It is also pertinent to note that while passing the restoration order this Tribunal has duly taken consideration of the fact of the acceptance letter dated 07.07.2020. The restoration order dated 28.06.2024 is reproduced herein under:

“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.*

(Emphasis Provided)

58. We also note that no appeal has been filed by the Corporate Debtor against restoration order dated 28.06.2024, Hence the contention that tribunal could not have permitted the restoration of the present Company Petition stands negated and cases sighted are found to be distinguishable on facts.

59. We further note that the Corporate Debtor to show that obligations arising from a settlement agreement do not constitute "financial debt" under Section 5(8) of the IBC, as there is no disbursal for consideration of time value of money has cited the case of the ***Hon'ble Supreme Court in Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. [(2021) 3 SCC 475]***.



60. In this regards we say that the Sanction letter dated 20.09.2013 clearly states that the entire loan is repayable within 66 monthly instalments of Rs.42.42 lakhs each after initial repayment holiday of 13 months from the date of disbursement which was revised to 25 months vide revived sanction letter dated 19.03.2016. Further the failure to honour the OTS by the Corporate Debtor revives its order obligation under the original sanction letter. Therefore, there is clear disbursal for consideration of time value of money. Therefore, the case law submitted does not aid the case of the Corporate Debtor.

61. We also note that vide order dated 04.12.2019 this tribunal after considering the facts and circumstances of the case on merits as also the reply of the Corporate Debtor available on record had admitted the Corporate Debtor into CIRP. It is noted that in the reply filed to the Original Petition the Corporate debtor had admitted its liability as well as default. It is pertinent to note that the Petition which was restored vide order dated 28.06.2024 is of the Original Company Petition which was admitted by this tribunal vide its order dated 04.12.2019.

62. Further, we also note that the Petitioner has enclosed Statement of Account of the for the aforesaid facilities granted to the Corporate Debtor which shows that the amount claimed in the Petition is in consonance with the Statement of Account. The Petitioner has also enclosed CRILC Report, Certificate under the Bankers Book Evidence Act 1891.

63. The Tribunal is also of considered opinion that the application made by the Petitioner is complete in all respects as mandated under the Code and the default amount is also in excess of the minimum amount stipulated in section 4(1).

64. Therefore, we say that there is a debt and default in the present case.

65. Further, the financial creditor has relied upon following case laws to continue the CIRP of the Corporate Debtor from the stage of withdrawal

v. M/s. Omega Corrugators Pvt. Ltd. vs. Apex Consumer Appliances

Private Limited - Order passed by NCLT Mumbai

- vi. I.A. No. 1407/2022 in C.P. No. (IB) 3456/MB/C-III/2019 dated 21.05.2024 (Relevant Paras 17 to 20, 30, 31)***
- vii. ICICI Bank Limited vs. OPTO Circuits (India) Limited and Ors. - Order passed by NCLAT Chennai Company Appeal No. 146/2021 dated 28.04.2022 (Relevant Paras 22, 23, 24)***
- viii. Sree Bhadra Parks and Resorts Ltd. Vs. Sri. Ramani Resorts and Hotels Pvt. Ltd. - Order passed by NCLAT Chennai Company Appeal No. 06/2021 dated 09/04/2021 (Relevant Paras 49, 56 & 57).***

66. However, we note that the CIRP was initiated against the Corporate Debtor on 04.12.2019 only considering the reply of Corporate Debtor available on record. The initiation of CIRP was allowed to be withdrawn under Section 12A of IBC in terms of settlement agreement. The Financial Creditor in its restoration Petition has prayed to revive the captioned Company Petition and take the file on record. The Adjudicating Authority restored the Petition observing as follows:

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.

67. We note that Company Petition has merely been restored and been not been revived from the stage of withdrawal. The Restored Petition was heard as fresh Petition where both the parties were heard at length and this Petition is accordingly dealt with. The cases relied upon by the Financial Creditor are distinguishable to the extent of facts mentioned above. Therefore, the CIRP of the Corporate Debtor cannot continue from the stage of withdrawal, as requested by the Financial Creditor.

68. Further it is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a



default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder.


69. We are supported by the decision of Hon'ble Supreme Court in ***Innovative Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]*** wherein it was held as follows:

28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days' receipt of a notice from the adjudicating authority.

30.....On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. Payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

70. Given the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no.1902 of 2019 is **admitted** and ordered as follows:

ORDER

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- i. The above Company Petition No. (IB) 1902(MB)/2019 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Privilege Healthcare Services Private Limited.
 - ii. The Petitioner has proposed the name of **Mr. Shreyansh Jain** Registration No. **IBBI/IPA-001/IPP01683/2019-2020/12727** to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 16.06.2023 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA which is valid upto 30.06.2025. Accordingly, we appoint **Mr. Shreyansh Jain as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
 - iii. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order.
 - iv. There shall be a moratorium under section 14 of the Code prohibiting the following:
 - 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 any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;



- c) 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;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- v. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- vi. The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii. The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.
- viii. The public announcement of the Corporate Insolvency Resolution process shall be made immediately as specified under section 13 of the Code.
- ix. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.



- x. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xii. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xiii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xiv. Accordingly, this Petition is **Admitted**.

SD/-

Charanjeet Singh Gulati
Member (Technical)

SD/-

Lakshmi Gurung
Member (Judicial)

Apurva, LRA