

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

CP (IB) No.991/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Unity Small Finance Bank Limited

...Financial Creditor/ Applicant

V/s

Sapphire Hospitals Private Limited

[CIN: U85110MH2007PTC176497]

...Corporate Debtor/Respondent

Order Dated:27.01.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Jinal Atul Sanghvi, Advocate.

For the Respondent(s) : Mr. Aysh J Rajani a/w
Ms. Khushboo Shah i/b AKR
Advisors, PCA.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application bearing C.P. (IB) No. 991/MB/C-IV/2021 filed by Unity Small Finance Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution

Process (CIRP) against Sapphire Hospitals Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Ranjan Ghosh, Authorised Representative of the Financial Creditor duly authorised vide its Board Resolution¹ dated 14.10.2021 passed by the Board of Trustees, claiming total default of Rs.41,61,28,103/-² (Rupees forty-one core sixty-one lakh twenty-eight thousand one hundred three only).
3. The Date of Default³ is stated to be 31.01.2019 in the Petition. The Petition is filed on 03.10.2021 which is within the period of three years from the Date of Default.
4. The case of the Financial Creditor is as under:
 - a. The Financial Creditor had, upon request of the Corporate Debtor sanctioned a Credit Facility to the tune of Rs.19,60,00,000/- (Rupees nineteen crore sixty lakh only) vide Sanction Letter⁴ dated 08.08.2016 in a Consortium with the Bharat Bank (Lead Bank) for the purpose to pay off Creditors arose due to project escalation against the primary and collateral securities with Pari Passu Charges of Bharat Bank. The said facility was disbursed into the Bank Account of the Borrower from 27.09.2016 to 17.12.2016 in 21 tranches.

¹ Pp 17-18 of IA1498 of 2022

² P.16 of the Petition

³ P.16 of the Petition

⁴ Pp 31-39 of the Petition

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- b. A Forwarding Letter was executed by the Corporate Debtor and Co-borrowers and Corporate Guarantors. The Financial Creditor through Lead Bank entered into a Term Loan Agreement⁵ dated 22.09.2016 with the Corporate Debtor and Co-borrowers for a Credit Facility of Rs.19,60,00,000/- (Rupees nineteen crore sixty lakh only).
- c. The Corporate Debtor made certain repayment and hence, in May 2018, the outstanding Credit Facility was remained Rs.18,64,00,000/- (Rupees eighteen crore sixty-four lakh only).
- d. The Facility was enhanced to the tune of Rs.30,04,00,000/- (Rupees thirty crore four lakh only) and Restructured vide Sanction Letter⁶ dated 14.05.2018 in Consortium with the Bharat Bank. Forwarding Letter was executed by the Corporate Debtor and the Co-borrowers. Pari Passu Agreement⁷ was signed on 24.05.2018.
- e. The Financial Creditor vide letter dated 31.12.2018 informed the position of various loan account to the Corporate Debtor and informed that a sum of Rs.136.99 lakh is overdue as on that date.
5. The Corporate Debtor has filed its Affidavit-in-reply dated 20.04.2022 and has submitted that the loan was restructured, and the principal had not become due for payment. It has further alleged that funded loan was not disbursed.

⁵ Pp 48-60 of the Petition

⁶ Pp 71-78 of the Petition

⁷ Pp 87-101 of the Petition

Findings/Observations:

6. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
7. It is observed by the Bench that the Sanction Letter⁸ dated 14.05.2018 issued by the Financial Creditor stipulated moratorium period of 12 months from the date restructuring. However, it clearly stated that “interest to serve during moratorium period”. Further, clause 7(q)⁹ thereof also clearly stated that the promoters should fund the interest on Term Loans as and when it is due as the same are not funded as per restructuring package.
8. After perusal of the material on record, this Bench is of considered view that there is default in the repayment of interest due on restructured loan and such interest exceeds the threshold limit as prescribed under the Code i.e. amount stated as per overdue letter is Rs.136.99 lakh.
9. The existence of the debt is not disputed. Hence, it is a fit case for admission of the Corporate Debtor to CIRP under section 7 of the Code.
10. After perusal of the material on record, this Bench is of considered view that no reason to deny the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor himself has admitted its liability.

⁸ Pp 71-78 of the Petition

⁹ P.74 of the Petition

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11. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.
12. The Applicant has proposed the name of Mr. Prasad Kamalakar Dharap, a registered Insolvency Resolution Professional¹⁰ having Registration Number [IBBI/IPA-001/IP-P00702/2017-2018/11228] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 991/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Unity Small Finance Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Sapphire Hospitals Private Limited, Corporate Debtor is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:

¹⁰ P.5, Part IV of the Petition

- 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.

- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Prasad Kamalakar Dharap, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00702/2017-2018/11228], E-mail: dharap65@rediffmail.com, as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh 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 (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution

Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)

27.01.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)