

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 04.11.2020

**THROUGH VIDEO CONFERENCING**  
**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Ashok Kumar Borah, NCLT KOCHI  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No.156/BB/ 2020	For hearing/ clarification	Sec 7 of I&B code 2016	Punjab National Bank(Interna tional) Ltd	Mithilesh Kumar Pandey, Advocate	Gokul Superspeciali ty Hospital Pvt Ltc	Pramod N kathavi

ADVOCATE FOR PETITIONER/s: *Mithilesh Kumar Pandey*

ADVOCATE FOR RESPONDENT/s: *Pramod N. Kathavi*

**ORDER**

Heard Mr. Mithilesh Kumar Pandey, learned Counsel for the Petitioner and Mr. Pramod N. Kathavi, learned Counsel for the Respondent through Video Conference.

C.P(IB)No.156/BB/2020 is disposed of vide separate order.

*[Signature]*  
**MEMBER (T)**

Amar

*[Signature]*  
**MEMBER (J)**

Verified

*[Signature]*  
Court Officer

IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

C.P.(IB)No.156/BB/2020  
U/s.7 of the IBC, 2016  
R/w Rule 4 of I&B (AAA) Rules, 2016

Between:

**Punjab National Bank (International) Ltd.**

R/Off: 1 Moorgate, London,  
EC2R6JH

- Petitioner/Financial Creditor

And

**Gokul Super Speciality Hospital  
Private Limited**

R/Off: Amma Temple Road,  
Ambalpady NH-17, Udupi,  
Karnataka - 576 103.

- Respondent/Corporate Debtor

Order Dated : 4<sup>th</sup> November, 2020

Coram: 1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through video conference)

For the Petitioner : Mr. Mithilesh Kumar Pandey, Advocate  
For the Respondent : Mr. Pramod N. Kathavi, Advocate

ORDER

*Per: Ashutosh Chandra, Member (Technical)*

1. C.P.(IB)No.156/BB/2020 is filed by Punjab National Bank (International) Limited ('the Petitioner/Financial Creditor'), U/s.7 of the IBC, 2016, R/w Rule 4 of I&B

(AAA) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Gokul Super Speciality Hospital Private Limited ('the Respondent/Corporate Debtor') on the ground that it has committed default for an amount of USD.35,86,397.05/- (USD Thirty-Five Lac Eighty-Six Thousand Three Hundred Ninety-Seven and Zero Five cents only).

2. Brief facts of the case which are relevant to the issue in question, are as follows:

- 1) M/s. Punjab National Bank (International) Limited ('the Financial Creditor') was incorporated on 13.04.2006 vide its Company Registration No.05781326. Its registered office at 1 Moorgate, London, EC2R6JH and M/s. Gokul Super Speciality Hospital Private Limited (the Corporate Debtor) was incorporated on 28.04.2005 vide CIN:U85110KA2005PTC036163 and having its registered office at Amma Temple Road, Ambalpadu NH-17, Udupi, Karnataka-576103.
- 2) As per the Petition, the Financial Creditor had provided a loan facility of USD 4.50 MN vide sanction order dated 04.12.2014/13.01.2015 in relation to setting up of a Super Speciality Hospital in Udupi. Various securities were provided by the Corporate Debtor, including land and building, as also mortgage of medical equipment etc. As the Corporate Debtor defaulted in repayment of the loan, the Petitioner issued a Demand Notice on 17.09.2018, as also invocation notice of personal guarantees. But the facilities remained unpaid. Hence this Petition. The amount due from the Corporate Debtor is USD 3,586,397.05 (Rs 25,46,34,190.55 @ Rs 71 to a USD).
- 3) The Respondent filed its statement of objections dated 04.09.2020, by inter alia contending that the Petition was not maintainable and was an abuse of the process of law; that the Corporate Debtor was not insolvent but had assets which were mortgaged to the Bank; it was willing to settle the dispute by paying upto USD 3 million; that the amounts mentioned by

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*[Handwritten signature]*

the Bank were not correct as a substantial part of the debt had been repaid; a wrong conversion rate had been applied by the Bank; that the Corporate Debtor was building a 150 bed hospital and all its assets were secured while availing the loan which was granted after full verification; the delays in repayment were due to factors beyond their control such as faulty construction of pillars, flooding , non availability of sand due to government ban; there was never any misuse of funds; and that upto 31.03.2016 only 45% construction could be completed when the Financial Creditor stopped release of further loan, leading to further delays. The Financial Creditor also did not allow restructuring and rescheduling of the loan and the OTS suggested also did not materialize. Takeover of loan proposed by them was also not agreed to. It attempted to settle the dispute but could not be done due to the unreasonable terms offered by the Bank even upto 17/07/2020. The Financial Creditor refused an OTS again on 21/08.2020 though it was always willing to settle the dispute and the dues on reasonable terms.

- 4) A detailed rejoinder has been filed by the Petitioner on 17.09.2020 rebutting the reply filed by the Corporate Debtor as mentioned above, including para wise comments to the same, with a prayer to dismiss the contentions of the Corporate Debtor in totality.

4. Mr. Mithiresh Kumar Pandey, learned Counsel for the Petitioner and Mr. Pramod N. Kathavi, learned Counsel for the Respondent appeared and were heard **through video conference**. Even as the case was being heard on merits of the details brought on record in the Petition and the objections filed by the Respondent/Corporate Debtor, the learned Counsel for the Petitioner submitted that it has made a fresh One Time Settlement offer to the Respondent Corporate Debtor vide its letter dated 14.09.2020. The terms of the Offer are as under:

*The One Time Settlement offered by the Petitioner is as under:*



"1) OTS by way of payment of USD 3,000,000 against the total recoverable dues of USD 3,910,594.90 as on 10.09.2020, which is to be paid in installments as per following schedule:

Month	Amount
On or before 31.10.2020	\$ 1,000,000
On or before 30.11.2020	\$ 1,000,000
On or before 31.12.2020	\$ 1,000,000

- 2) OTS Agreement/Memoranda of Settlement and other legal documents shall be executed from borrower through approved solicitor of the bank and the cost of which shall be met by the borrower.
- 3) Bank has a right to "Right of Recompense" if the terms of OTS offered to the other lenders are better than the offer made to us.
- 4) The source of funds must be identified and disclosed by the borrower.
- 5) This OTS sanction shall be treated as null & void in case the borrower fails to pay the OTS amount as per terms of this sanction. Bank reserves the right to revoke the OTS sanction even in case of delay in payment as describe above and legal recourse be taken immediately for recovery of bank's dues in full.
- 6) On 25.09.2020 the Corporate Debtor filed a Memo wherein it is stated as under:

**MEMO**

"The Respondent above named respectfully submits that, the Respondent has accepted to the One Time Settlement as proposed by the Petitioner vide its letter dated 14.09.2020. A copy of which is Annexed to the Rejoinder filed by the Petitioner. The Respondent has

*signed and sent their letter of acceptance to the Petitioner Bank and the same is enclosed herewith. The Respondent respectfully submits that the said Memo and the documents may be taken on record of the proceedings and pass such other order or orders as this Hon'ble Tribunal may deem fit, proper, necessary and expedient in the circumstances of the above case."*

7) Along with this memo is annexed a letter addressed by the Corporate Debtor, in reference to the One Time Settlement Offer dated 14.09.2020 stating that the MD and his family had tested positive for Covid 19 and were undergoing treatment in a hospital. Further that the offer was acceptable to them "with one small modification, and that is that the first instalment of the settlement amount made be paid on or before the 15<sup>th</sup> November 2020, instead of 31<sup>st</sup> October, 2020. This modification to the one time settlement offer made by you, has already been accepted by your advocate, Mr. Mithilesh Pandey before the NCLT, Bengaluru and also accepted and noted by the Hon'ble NCLT, Bengaluru."

5. During the course of the hearing the Ld. Counsel for the Respondent strongly urged that the Petitioner may modify the Offer as mentioned above, ie. by deferring the payment of the first instalment and also the subsequent instalments by the same number of days. The Id. Counsel for the Petitioner agreed to the request that the first instalment would be deferred to 15<sup>th</sup> November.
6. We may state that this Tribunal is not a settlement forum to oversee terms of repayment. However, we consider it imperative to add that in view of the fact that the Corporate Debtor's Directors and family members are undergoing treatment for Covid 19, they have always shown their willingness to repay the debt and have made several offers to settle the issues with the Bank; have been handicapped in repaying the debt for bonafide reasons beyond their control as

mentioned in their statement of objections; are involved in humanitarian work of building a hospital for the benefit of the general public, the Petitioner should take a liberal view in accommodating the Corporate Debtor in its request for making slight modifications in the instalment plan for the repayment of debt. We cannot also ignore the fact that in the present times of economic distress, caused by the global novel corona virus pandemic necessitating a nationwide lockdown, major decisions have had to be taken by the Government to protect Industry from its effects, to ease terms / defer loan repayment terms, and to inject economic stimulus to revive the economy. Modifications and suspension of various provisions of the Code have been initiated so that companies facing financial stress due to the pandemic can be supported rather than be pushed into CIRP, or even into liquidation, which is the not objective of the Code. In such circumstances we do expect the Bank to take a liberal and more workable view of the matter and offer terms of repayment that are workable for the Respondent. Hence, while the Petitioner has agreed to defer the date of payment for the first instalment to 15<sup>th</sup> November, it may consider similar deferment for the subsequent instalments as well.

7. 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 made further, we are inclined to permit the Petitioner to withdraw the instant Company Petition. The Petitioner insists that the withdrawal may be permitted with liberty to revive the petition in case the Respondent does not adhere to the terms of the One Term Settlement Offer. We permit the same but such 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.




8. In the result, C.P. (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 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.



**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**

Amar



**ASHOK KUMAR BORAH  
MEMBER, JUDICIAL**