



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 15/KB/2023

A Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

SUMAN HEALTHCARE PRIVATE LIMITED

... Financial Creditor/ Petitioner.

Versus

MOUNTVIEW CONSULTANCY PRIVATE LIMITED

... Corporate Debtor/ Respondent.

Date of Pronouncement: August 13, 2024.

CORAM:

SMT. BIDISHA BANERJEE HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Financial Creditor:

Ms. A. Rao, Adv.

Mr. S. Tibrewal, Adv.

For the Intervener:

Mr. Dripto Majumdar, Adv.

Mr. Aditya Garodia, Adv.

For the Corporate Debtor:

Mr. Abhidipto Tarafdar, Adv.

Ms. Sutapa Mitra, Adv.

ORDER

Per: D. Arvind, Member (Technical)

1. The Court congregated through a hybrid mode.
2. Ld. Counsel appearing on behalf of the parties were heard *in extenso*.
3. This is an application preferred by **Suman Healthcare Private Limited** (Financial Creditor/Petitioner) against **M/s. Mountview Consultancy Private Limited** (Corporate Debtor/Respondent) seeking



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 15/KB/2023

initiation of Corporate Insolvency Resolution Process (in short “CIRP”) under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code”.

4. The amount claimed to be in default is Rs. 1,50,02,520/- including interest of Rs. 14,02,520/- as on 31.10.2022, and the default took place on 29.08.2022, as claimed in the petition.

5. Factual matrix of the case is as under:

5.1. That, in July 2021, the Financial Creditor entered into an agreement for advancing a loan up to 150 Lakh to the Corporate Debtor and the same was agreed upon for repayment on or before 31.03.2022.

5.2. That, the Corporate Debtor took disbursement for an amount of Rs. 64 Lakh. The said amount along with interest fell due on 31.03.2022.

5.3. It is contended that the Corporate duly paid the interest but failed to pay the principal and the term for repayment of the principal was extended by another 150 days pursuant to which a loan letter dated 01.04.2022 was issued.

5.4. That, the Financial Creditor further disbursed Rs. 72 Lakh during the period after 01.04.2022. The said loan fell due on 29.08.2022.

5.5. That, the Corporate Debtor failed to repay the principal amount of Rs. 136 Lakh (i.e., Rs. 64 Lakh + Rs. 72 Lakh) and the interest thereof till date, the Financial Creditor having no option, issued a legal notice and recalled the loan on 28.09.2022.

5.6. That, the Corporate Debtor has not responded to such demand Notice and hence this application, claims the counsel for the Financial Creditor.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 15/KB/2023

6. Submissions made by the Petitioner:

6.1. Ld. Counsel appearing on behalf of the Financial Creditor took us to the letter issued by the Financial Creditor on 01.07.2021, to the Corporate Debtor conveying his willingness to advance loan to the tune of Rs. 1.50 crores along with interest of 18% per annum, and the same is payable along with principal on or before 31.03.2022.

6.2. Further, the Ld. Counsel took us to another letter dated 01.04.2022 which granted an extension of time to repay the loan 29.08.2022 on such terms and conditions mentioned therein.

6.3. The Ld. Counsel further took us to various disbursement details, annexed at pages 39 to the petition, along with the confirmation of receipt by the Corporate Debtor, annexed at pages 75-81 to the petition.

6.4. It is submitted that since, the Corporate Debtor has not paid he contends that this is a fit case for admitting the Corporate Debtor into CIRP as the default is clearly established and the defaulted amount is excess of Rs. 1 Crore as stipulated in I&B Code. It is further submitted that this petition has been filed on 16.01.2023 and the date of default is 29.08.2022, and consequently, it has been filed well within the period of limitation.

7. Per contra, submissions made by the Respondent:

7.1. The Learned Counsel appearing on behalf of the Respondent would submit that the loan was advanced by the Financial Creditor, however, no loan agreement has been executed with the party to show stipulated covenants to be followed.

7.2. Further, it is submitted that the Financial Creditor has extended the time limit of repayment of loan and, therefore, the debt is yet to become due and consequently, the question of “default” does not arise.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 15/KB/2023

8. Analysis and Findings:

8.1. It is evident that there are letters dated 01.07.2021 and 01.04.2022, detailing the loan amount, the term interest, and additional charges, in case of any default on part of the corporate debtor.

8.2. Both the letters have duly been accepted by the Corporate Debtor and the same has not been disputed and when that being the case, the question of alleging that there was no agreement between the parties is factually incorrect. Further, we find that the corporate debtor issued letters and acknowledged the receipt of the loan issued by the financial creditor which are annexed at pages 75-81 to the petition.

8.3. We find no support to the argument made by Ld. Counsel for the Corporate Debtor that the Financial Creditor has given extension for repayment of loan.

8.4. In the absence of any such evidence to suggest that the extension has been granted, we find that this is fit case for admitting the Corporate Debtor into CIRP as the date of default and the amount has been clearly established.

8.5. We further find that the Financial Creditor has supplied a copy of the bank statement showing the transaction between the parties including the disbursement of the alleged debt to the Corporate Debtor, annexed at pages 42-44 to the petition.

8.6. We are supported by the views of Hon'ble Apex Court to define "Financial Debt" and to initiate Corporate Insolvency Resolution process as under:

(a) In *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* reported in (2019) 8 SCC 416, it was held that:



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA

Company Petition (IB) No. 15/KB/2023

“any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money.”

(Emphasis added)

(b) In *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited* reported in (2020) 8 SCC 401, it was held that:

“the essential condition of financial debt is disbursement against the consideration for time value of money.”

(Emphasis added)

(c) In *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) it was held that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...’

(Emphasis added)

(d) In *Innoventive Industries Ltd. v. ICICI Bank* reported in (2018) 1 SCC 407: MANU/SC/1063/2017, it was held that:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...’

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...’

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 15/KB/2023

“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.*”

(Emphasis added)

8.7. Further, the date of default is 29.08.2022 whereas this application has been filed on 16.01.2023 which is well within the period of limitation, and therefore, we admit the Corporate Debtor into CIRP.

9. In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 15/KB/2023** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **Suman Healthcare Private Limited (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/s. Mountview Consultancy Private Limited (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 15/KB/2023

Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- 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 asset 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 (54 of 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.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

iv. 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.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 15/KB/2023

- v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Applicant has proposed the name of **“Mr. Neeraj Kejriwal”**, Address: P-178 CIT Scheme VI M, Phoolbagan, 3rd Floor, Kolkata, West Bengal, 700054, Registration no. IBBI/IPA-001/IP-P00392/2017-2018/10710, Email id. nkejriwal@gmail.com, Contact: +91 6291470523, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as letter D at pages 36-38 to the petition, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or IIIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Neeraj Kejriwal”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Neeraj Kejriwal”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 15/KB/2023

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 15/KB/2023

- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 15/KB/2023

progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

xvi. The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

10. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

11. Post the Company Petition on **24/ 09/ 2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 13th Day of August 2024.

Ar. (Steno)/ Bose, R. K. [LRA]