

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 450 of 2023

&

I.A. No. 1484 of 2023

IN THE MATTER OF:

Karina Healthcare Pvt. Ltd.

...Appellant

Versus

H N Reacon Pvt. Ltd.

...Respondents

Present:

For Appellant: Mr. Yashoj Guglani, Advocate

For Respondent: Mr. Subhanshu Sharma, C.S.

O R D E R

21.07.2023: Heard Learned Counsel for Appellant and Respondent-C.S.
Shree Subhanshu Sharma.

2. This Appeal has been filed against the Order dated 28th November, 2022 by which order the Adjudicating Authority has rejected Section 7 Application filed by the Appellant. Aggrieved by the said order, the Appellant has come up in the Appeal.

3. Learned Counsel for the Appellant submits that the Appellant had filed documents to prove the disbursement of the loan and the amount is still balance for payment. It is submitted that the Adjudicating Authority committed error in rejecting Section 7 Application on spurious ground that ledger and the bank statement do not tally whereas said observations were not correct since there was no discrepancies between the Bank Statement and the Ledger Account. It is further submitted that the Corporate Debtor has also filed Reply before the NCLT in which reply, they admitted that amount of Rs.

4.29 Crores is still pending and debt and default being admitted, the Adjudicating Authority ought to have admitted the Section 7 Application.

4. Company Secretary appearing for the Respondent submits that Company's situation was not financially good hence the payment could not be made however the loan is not denied and the repayments were also made of Rs. 4.10 Lakh and Rs. 2 Lakh in August, 2015.

5. We have considered the submissions of Learned Counsel and Company Secretary for the parties and have perused the record.

6. Section 7 Application was filed by the Financial Creditor with the case that loan was given to the Corporate Debtor for an amount of Rs. 9.41 crores out of which Rs. 5.12 Crores was paid in the year 2013-14 and the amount of Rs. 4.29 was pending. In the Part-IV of the Section 7 Application, the said amount was claimed on the basis of which the CIRP was sought to be initiated.

7. The Adjudicating Authority in its Order has rejected Section 7 Application observing that ledger account and the bank statement do not tally. Observations have been made by the Adjudicating Authority in paragraph 9 and 10 and conclusions in para 20 of the order of Adjudicating Authority are recorded which are to the following effect:

"20. Accordingly, this Bench conclude that:

(a) The Bank Statement produced and relied by the Applicant is inconsistent with its Ledger Account;

(b) The alleged debt was not disbursed qua the loan agreement dated 17.12.2021 annexed by the Applicant;

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(c) There is nothing on record pertaining to the disbursement period that the amount was disbursed as Loan;

(d)Also, there is nothing on record to depict that the Applicant was eligible to grant loan to the Respondent in terms of Section 186 of Companies Act, 2013; and

(e) The Applicant has concealed that Sh. Sh. Rabinder Singh (DIN: 06520376) was having control over both the Applicant and the Respondent Company during the period of transaction.”

8. The observation of the Adjudicating Authority that amount of Rs. 4.10 lac was received from Harvansh and not from the Corporate Debtor is not a correct observation. The Bank Statement has been placed on record by the Corporate Debtor which indicate that on 24th August, 2015 by transfer Rs. 4.10 Lac was received by the Financial Creditor and on the same day the said amount of Rs. 4.10 Lac was transferred to one Mr. Harvansh. The two entries are separate entries in the Bank Statement and tallies with the Ledger Account which indicate that Rs. 4.10 Lac was credited in the Account of the Financial Creditor. Thus the basis of the order of the Adjudicating Authority rejecting Section 7 Application is unfounded. As far as observation of the Adjudicating Authority that the agreement dated 17.12.2021 can not be said to be Loan Agreement the said observation is also not correct since Agreement dated 17.12.2021 was a settlement agreement under which the Corporate Debtor agreed to settle the dues of Rs. 4,29,34,267/- for Rs. 3 Crores. The Settlement Agreement has also been brought on record which clearly indicate that lender has granted the loan to the Corporate Debtor and the Agreement dated *Company Appeal (AT) (Insolvency) No. 450/2023*

17.12.2021 was only settlement and there was no case that it is a loan agreement.

9. We may further notice the Reply of Corporate Debtor which has been brought on record at page 170 in paragraph 2 of the Reply where following has been stated:

“That M/s. H.N Reacon had taken et loan of Rs. 9.41 cr during Financial Year 2012-13 from M/s. Karina Healthcare Pvt. Ltd. out of which Rs. 5.12 Cr of Loan was repaid in year 2013 and 2014. Hence net loan of Rs. 4.29 cr was pending payable to M/s. Karina Healthcare Pvt. Ltd.”

10. Debt and Default being admitted, the Adjudicating Authority ought to have admitted Section 7 Application in view of the law laid down in **“Innoventive Industries Pvt. Ltd. Vs. ICICI Bank & Anr.” (2018 1 SCC 407)**. We thus are of the view that order passed by the Adjudicating Authority is not sustainable in law and is hereby set aside. We direct the Adjudicating Authority to pass an order of admission of Section 7 Application within 30 days from the date copy of this order is produced and thereafter proceed in accordance with law.

The Appeal is allowed, accordingly.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

Basant/nn