



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT-I  
KOLKATA**

C.P. (IB) NO. 261/KB/2025

*An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016*

**IN THE MATTER OF:**

**SCORPION NIRMAN PRIVATE LIMITED**

**...Applicant/Financial Creditor**

***Versus***

**SWAL LIMITED**

**...Corporate Debtor**

**Date of Pronouncement: 08.06.2026**

**CORAM:**

**Smt. Bidisha Banerjee, Hon'ble Member (Judicial)**

**Cmdr Siddharth Mishra, Hon'ble Member (Technical)**

**APPEARANCE:**

**For the Financial Creditor:**

Mr. Rahul Auddy, Adv.

Mr. Aditya Gooptu, Adv.

**For the Corporate Debtor:**

Ms. Tanvi Luhariwala, Adv.

Ms. Simran More, Adv.

**ORDER**

**Per: Smt. Bidisha Banerjee, Hon'ble Member (Judicial)**

1. The Court congregated through hybrid mode.
2. The Ld. Counsels for the parties were heard at length.
3. The present Company Petition has been filed by the Scorpion Nirman Private Limited, (hereinafter referred to as the Financial Creditor), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016) for initiation of Corporate Insolvency

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Resolution Process (hereinafter referred to as CIRP) against Swal Limited (hereinafter referred to as Swal Limited) on account of default in repayment of financial debt.

**4. Submissions on Behalf of the Applicant:**

- 4.1** It is submitted that the Applicant and the Corporate Debtor executed a Loan Term Sheet on 15.01.2015 wherein the entire understanding of Inter-Corporate Loan was recorded. It was agreed that the total loan shall be for Rs. 7 Crore and will be disbursed in three tranches.
- 4.2** It is further submitted that a sum of Rs. 6.5 Crores and Rs. 15 Lakhs was disbursed to the Corporate Debtor on 29.01.2025 and 21.03.2025. The receipt of the aforementioned amounts have been acknowledged by the Corporate Debtor vide letters dated 30.01.2025 and 26.03.2025.
- 4.3** It is averred that the Corporate Debtor failed to pay interests for the loan taken by them, therefore, the Financial Creditor has repeatedly asked for payment of interest through several letters. In response, the Corporate Debtor has confirmed the interest amount claimed by the Financial Creditor and stated that they are going through financial difficulties and are therefore unable to pay the interest outstanding to the Financial Creditor.
- 4.4** It is further stated that due to failure on part of the Corporate Debtor to pay the interest despite repeated reminders, the Financial Creditor has sent several demand notices on 04.07.2025, 08.08.2025, 04.09.2025, 07.10.2025, 15.10.2025 and has also recalled the loan vide letter dated 07.06.2025.

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**4.5** It is submitted that the date of default is 22.06.2025, being 14 days from the loan recall notice, i.e., 07.06.2025 and the total amount claimed as on the date of default is Rs. 6.65 Crores along with additional interest.

**5. Submissions on Behalf of the Corporate Debtor:**

**5.1** It is contended that the transaction in question is an Inter-Corporate Loan which could not have been granted in law, as it squarely violates the mandatory requirements of law.

**5.2** It is further contended that the alleged amount claimed by the Petitioner does not constitute a “financial debt” within the meaning of Section 5(8) of the IBC, 2016.

**6. Rejoinder:**

**6.1** It is contended that the deponent of the Corporate Debtor is not authorized to sign or affirms the reply affidavit on behalf of the Corporate Debtor. Though there is a mention of a board resolution marked as Annexure A, such Annexure does not exist in the affidavit.

**7.** We have heard the Learned Counsels for parties and perused records and noted the rival contentions.

**8. Analysis and Findings:**

**8.1** The primary issue for consideration before this Adjudicating Authority is whether the aggregate amount of Rs. 6.65 Crores advanced by the Financial Creditor Scorpion Nirman Private Limited to the Corporate Debtor Swal Limited, constitutes a financial debt under Section 5(8) of the IBC, 2016.

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- 8.2** It is well settled that for an application under Section 7 of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority is required to examine whether the debt is due and payable and whether the application is filed within the period of limitation prescribed under Article 137 of the Limitation Act, 1963.
- 8.3** It is an admitted position that the transaction in question is in the nature of an inter corporate loan. In this regard, the Corporate Debtor contends that the amount was advanced in violation of the mandatory provisions of the Companies Act, 2013. It is further argued that the said amount being an Inter-Corporate Loan, does not fall within the ambit of financial debt as defined under Section 5(8) of the IBC, 2016.
- 8.4** Under Section 186 of the Companies Act, 2013, the maximum limit for granting loan by a Company is either sixty six percent of its paid-up share capital or a hundred percent of its free reserves. In order to legitimately grant a loan exceeding the aforementioned limit, the Company has to pass a special resolution.
- 8.5** Accordingly, through the Board Resolution dated 27.03.2024, the Board of Directors of the Financial Creditor have duly authorized the grant of loan to the Corporate Debtor. Since the statutory mandate for granting the inter-corporate loan has been complied with, the said loan is lawful.
- 8.6** The contention of the Corporate Debtor that an inter-corporate loan does not qualify as a financial debt under Section 5(8) of the IBC, 2016 is misconceived.
- 8.7** Section 5(8) of the IBC, 2016 which defines financial debt, does not impliedly or expressly exclude inter-corporate loans from its ambit. As long as the transaction satisfies the test of time value of money and has

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the commercial effect of borrowing, such loans, if unpaid when it is due, would qualify as a financial debt.

**8.8** Moreover, in **Narendra Kumar Agarwal v. Montrone Leasing Private Limited, Company Appeal (AT) (Insolvency) No. 549 of 2020**, the Hon'ble NCLAT upheld the decision of this Tribunal wherein an Application under Section 7 of the IBC, 2016 comprising of an inter-corporate loan was admitted and observed that an inter-corporate loan is included within the definition of financial debt. The relevant portion of the judgement is reproduced hereinbelow:


*“11. Thus, the contention of Financial Creditor is fully authenticated from the Money Receipt and bank transaction statement. The Appellant contends that the transaction may be treated as the 'Inter-Corporate Deposit', but it can not be treated as the Financial Debt. In case the Inter-Corporate Deposit is made for a certain period, which was to be paid back with interest then such transaction will also fall in the definition of 'Financial Debt'. The interest is the product of instant transaction, which is undoubtedly the time value of money. Thus, such transaction of the inter-corporate deposit is fully covered by the definition of Financial debt as provided under Section 5(8) of the I&B Code. The written contract can not be treated as an essential element to prove the Financial Debt if the transaction's nature is proved otherwise.”*

**(emphasis added)**

**8.9** As per the records annexed to this Application, the Corporate Debtor had requested the Financial Creditor for a loan of Rs. 7 Crores on 20.12.2024, pursuant to which, a loan term sheet/loan agreement dated 15.01.2025 was executed between the Financial Creditor and the Corporate Debtor for an unsecured loan of Rs. 7 Crores. Accordingly, the Financial Creditor had disbursed Rs. 6.5 Crores and Rs. 15 Lakhs on 29.01.2025 and 21.03.2025 respectively.

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- 8.10** Thus, the terms of the loan agreement clearly establishes the twin test of time value of money and commercial effect of borrowing as the amount advanced was coupled with consideration in the form of periodic interest payments and there was a clear obligation upon the Corporate Debtor to repay the principal amount along with accruing interest within a year.
- 8.11** Further, as per the Loan Agreement executed between the parties, the interest had to be paid monthly, within three days of end of the month and failure to pay the interest or principal within 7 days of due date would constitute an event of default.
- 8.12** In the present case, the default occurred on 07.03.2025 as the Corporate Debtor failed to pay the interest for the month of February within the stipulated period. Further, in the letter dated 15.04.2025, the Corporate Debtor itself had confirmed the outstanding dues and attributed the failure to repay the interest to financial crisis and cash flow mismatches.
- 8.13** Since the default is a continuing one and has occurred on and from March 2025, and this Application has been filed in November 2025, the present Application is well within the period of limitation.
- 8.14** Further, as per the records annexed to the Application, an aggregate amount of Rs. 7.6 Crores remains due as of October 2025, which is well above the minimum threshold prescribed under Section 4 of the Code.
- 8.15** Once the “debt’ and “default” is admitted or established the petition must be admitted.

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**8.16** We are fortified by the views of Hon'ble Apex Court to define "Financial Debt" and to initiate Corporate Insolvency Resolution process which is as under:

**(a) Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416:**

*"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) Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401:**

*"the essential condition of financial debt is disbursement against the consideration for time value of money."*

**(Emphasis added)**

**(c) Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) 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) Innoventive Industries Ltd. v. ICICI Bank reported in (2018) 1 SCC 407: MANU/SC/1063/2017 has laid down 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**

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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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“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)**

9. In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 1929/KB/2019** 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 **Scorpion Nirman Private Limited (Financial Creditor)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Swal 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

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the 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:

- 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.

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- 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 Jain”**, Address: 4, Synagogue Street, Suit 205, 2<sup>nd</sup> Floor, Facing Brabourne Road, Kolkata-700001, Registration no. IBBI/IPA-001/IP-P01067/2017-18/11758, Email id: [reachneerajjain@gmail.com](mailto:reachneerajjain@gmail.com), as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as **“Annexure G”** at pages 90-91 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 IIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Neeraj Jain”** 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 Jain”** 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.
- 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

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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.
- 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

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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 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.

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- 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 **15/07/2026** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

**Cmde Siddharth Mishra  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

The Order signed on the **8<sup>th</sup>** day of **June** 2026.

*Anubhuti S. (LRA)*