



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**(IB)-324(ND)/2022**

**IN THE MATTER OF:**

**M/s. Karina Healthcare Private Limited**

Registered Office at:  
688, TF, Basti Hazrat Nizamuddin,  
New Delhi – 110014

**...Applicant/Financial Creditor**

**VERSUS**

**M/s. H N Reacon Private Limited**

Registered Office at:  
H.N-106, I-Floor (Near Giri Raj Hotel)  
Sarai Kale Khan, New Delhi-110013

**...Respondent**

**Section: 7 of IBC, 2016**

**Order Delivered on: 28.11.2022**

**CORAM**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Rohit Tiwari, Adv. Akash Shukla

**For the Respondent** : None.



## ORDER

### PER SHRI L. N. GUPTA, MEMBER (T)

M/s. Karina Healthcare Private Limited (for brevity, **the ‘Applicant/Financial Creditor’**) has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, **the ‘IBC, 2016’**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s. HN Reacon Private Limited (**the ‘Respondent’**).

2. The Respondent namely, M/s. HN Reacon Private Limited is a Company incorporated on 13.02.2004 under the provisions of the erstwhile Companies Act, 1956 with CIN U70101DL2004PTC124645 having its registered office at H.N-106, I-Floor (near Giri Raj Hotel) Sarai Kale Khan, New Delhi-110013, which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.75,00,000/- and Paid-up Share Capital is Rs.20,24,100/- as per the master data annexed with the Petition.

3. It is stated by the Applicant that it had provided an unsecured loan to the tune of Rs.15,13,65,000/- to the Respondent. It is further stated that the loan was disbursed during the period from February 2013 to March 2013 and on 27.08.2015. The Applicant has placed the



Loan Agreement dated 17.12.2021 on record. It is further stated that the Respondent had deposited Rs. 01,08,430,733/-.

4. The Applicant has further stated that it has sent the demand notice dated 03.01.2022, demanding an outstanding amount of Rs.4,29,34,267/-. The particulars of the unpaid amount of debt and the date of default are mentioned in Part IV of the application, which is reproduced below, for the sake of convenience:

**PART - IV**

<b>PARTICULARS OF FINANCIAL DEBT</b>		
1.	Total amount of debt granted Date(S) of disbursement	<b>Financial Debt Amount:</b> Principal Amount Rs. 4,29,34,267/- (Rupees Four Crore Twenty Nine Lakhs Thirty Four Thousand and Two Hundred Sixty Seven Only) was disbursed into many tranches.  <b>Transaction Details:</b> Unsecured Loan amount disbursed into various tranches as per Statement of Account enclosed.
2.	Amount Claimed to be in Default and The Date on Which the Default Occurred (Attach the Workings for Computation of Amount and Dates of Default in Tabular Form)	Total Outstanding Principal Amount is Principal 4,29,34,267/- (Rupees Four Crore Twenty Nine Lakhs Thirty Four Thousand and Two Hundred sixty Seven Only)

5. On perusal of the Part IV of the Application, it is observed that the Applicant has claimed an amount of Rs.4,29,34,267/- as an unpaid financial debt. However, there is no 'date of default' mentioned by the Applicant in Part IV of the Application.

6. Basing on the aforesaid facts and documents, the Applicant has prayed for initiation of CIRP against the Respondent.



7. This Adjudicating Authority has issued notice to the Respondent on 17.08.2022. On perusal of the order sheet, it is seen that despite valid service of notice, no reply was filed by the Respondent, therefore, its right to file reply was closed on 20.09.2022. Further, due to no representation on behalf of the Respondent, it was proceeded ex-parte vide order dated 19.10.2022.

8. We have heard the Ld. Counsel for the Applicant and perused the documents placed on record. It is affirmed by the Applicant that it had disbursed the Loan to the respondent in the year 2013, which had made the part-payments till 2015. Since the transaction is old, and there is no specific date of default mentioned by the applicant in the Part IV of the Application, therefore, we would like to examine as to whether the present Application is filed within the period of Limitation?

9. The Applicant has annexed its Ledger Account depicting part payments received by it. From perusal of the same, it is observed that the Respondent made the last part-payment of Rs. 02,00,000/- on 27.08.2015. The copy of Ledger Account is reproduced below:

(38)

**KARINA HEALTHCARE PVT. LTD.**  
688,TF,Basti Hazrat Nizamuddin, New Delhi-110014  
Ashram  
New Delhi

**H N Reacon Pvt Ltd**  
Ledger Account

1-Apr-2015 to 31-Mar-2021

Date	Particulars	Vch Type	Vch No.	Debit	Credit
1-4-2015	Cr Opening Balance			4,31,44,267.00	
24-8-2015	Dr Bank Of Baroda (06640200000814)	Receipt	7		4,10,000.00
27-8-2015	Cr Bank Of Baroda (06640200000814)	Payment	9	2,00,000.00	
	Dr Closing Balance			4,33,44,267.00	4,10,000.00
				<u>4,33,44,267.00</u>	<u>4,33,44,267.00</u>



10. On perusal of the aforesaid Ledger Account, we observe that the last Payment received by the Applicant was of Rs. 04,10,000/- on 24.08.2015 and the alleged loan was last disbursed on 27.08.2015 by paying Rs. 02,00,000/-. However, when we peruse the Bank Statement of the Applicant as annexed, to verify the receipt of the payment, we observe that the Payment of Rs. 04,10,000/- was received from one Harvansh Chawla and not from the Respondent Company. The scanned copy of the Bank Statement is reproduced below:

Statement of account for the period of 01-11-2014 to 01-11-2015

DATE	PARTICULARS	CHQ. NO.	WITHDRAWALS	DEPOSITS	BALANCE
15-07-15	Cheque Book Charges SEFDEL-NEW	210945		2,00,000.00	2,25,051.04
16-07-15	BY INST 210945 : MICR CLG (OTH BANK) HARVANSH	30	2,00,000.00		25,051.04
13-08-15	HARVANSH CHAWLA SEFDEL-NEW	211029		95,000.00	1,20,051.04
14-08-15	BY INST 211029 : MICR CLG (OTH BANK) HARVANSH	31	1,00,000.00		20,051.04
24-08-15	HARVANSH CHAWLA BY TRANSFER			4,10,000.00	4,30,051.04
24-08-15	BY TRANSFER HARVANSH	32	4,10,000.00		20,051.04
27-08-15	HARVANSH CHAWLA BY CASH			2,00,000.00	2,20,051.04
27-08-15	BY CASH				
Page Total:			34,05,342.00	28,05,000.00	2,20,051.04Cr

11. In view of the above, we do not find the Ledger Account placed by the Applicant to be genuine and reliable.

12. We further observe that though the alleged loan is stated to have been granted by the applicant between 2013 to 2015, however the loan agreement placed on record is of 17.12.2021 i.e., of a date much after the date of disbursement. Accordingly, we would like to examine the Loan Agreement annexed by the Applicant.



## LOAN AGREEMENT

This Loan Agreement (this "Agreement") is entered into as of 17.12.2021 by and between:

M/s KARINA HEALTHCARE PRIVATE LIMITED a company duly registered under the Companies Act, 1956/2013 having its registered office at 688 TF, Basti Hazrat



[1] For Karina Healthcare Pvt. Ltd. Limited

KARINA HEALTHCARE PRIVATE LIMITED

Nizamuddin, New Delhi-110014 having CIN- U85110DL2008PTC174229 through its director Mr. Shish Ram (hereinafter referred to as the "Lender" which expression shall unless repugnant to the context or meaning hereof, include its successors and permitted assigns)

AND

M/s H N REACON PRIVATE LIMITED, a company duly registered under the Companies Act, 1956/2013 having its registered office at H.N-106, 1-Floor (Near Gini Raj Hotel) Sarai Kala Khan, New Delhi-110013 having CIN-U70101DL2004PTC124645 through its director Mr. Saif Ali (hereinafter referred to as the "Borrower" which expression shall, unless repugnant to the context or meaning hereof, include its successors and permitted assigns);

Borrower and Lender are individually referred to as a "Party" and collectively as the "Parties"

WHEREAS, the Borrower is engaged in the business of trading of medical equipment's and the Lender is engaged in the business of leasing of service apartments;

WHEREAS, Lender has given the Borrower interest free loan of Rs. 4,29,34,267/- in a periodic manner over a number of years on account of commercial expediency. The details of the same are mentioned in Annexure-I to this agreement;

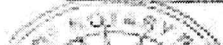
WHEREAS, in the past the Lender has requested the Borrower to repay the loan, but the Borrower could not pay the same due to its financial incapacity and has further requested the Lender to reduce the said amount;

WHEREAS the Lender in view of the commercial principles after discussing and giving a deep thought to the aforesaid proposal has accepted the said proposal and have requested the Lender to repay the final negotiated amount in one-go;

WHEREAS the amount negotiated between the Lender and the Borrower is of the Rs. 3,00,00,000/- (Rupees Three Crores Only) as the full and final payment to be made by the Lender to the Borrower;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth, the parties hereto hereby agree as follows:

Article I. PRINCIPAL AMOUNT OF THE LOAN





Subject to the terms and conditions hereof, the Lender, by its acceptance hereof, agrees to make the loan to the Borrower in the Principal Amount of Indian Rupees Three Crores Only only (INR 3,00,00,000/-) ,

Article 2 INTEREST

2.1 The Borrower shall not pay any interest on amount to be repaid but states that the said amount shall be paid in one tranche only within one month of signing of the present agreement.

Article 3 REPAYMENT OF FULL AMOUNT

The Borrower shall repay the Loan in one go or on before 3.1.2022

Article 4 PAYMENTS

4.1 All payments to the Lender hereunder shall be made in Indian Rupees on the due date for payment thereof to the Lender's account of such bank as the Lender may designate from time to time.

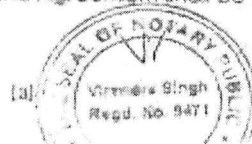
Article 5 EVENTS OF DEFAULT

When the Borrower fails to make any payment as per the scheduled timelines accepted by both of the parties the same shall constitute an Event of Default. In the event of such default, the Lender shall be at liberty to avail any or all the legal recourse available to it.

Article 6 EXPENSES

6.1 The Borrower shall pay all stamp duty, registration and other taxes to which this Agreement or any judgment given in connection with this Agreement is or at any time may be subject and shall indemnify the Lender against any liabilities, costs, claims and expenses resulting from any failure to pay or any delay in paying any such duty or tax. The responsibility to register this Agreement shall be on the Borrower.

Article 7 GOVERNING LAW



Certified True Copy

13. On perusal of the terms and conditions of the aforesaid Loan Agreement, it is observed that the amount was never disbursed qua the said Agreement, rather only the allegedly disbursed amount was reduced and terms negotiated. In our view, the said Agreement is misconceived and cannot be construed as a Loan agreement.



14. The Applicant has also annexed the Balance Sheet for the Financial Year 2019-20 and 2020-21 of the Respondent, to establish that the Petition is filed within limitation. While perusing the Balance Sheet, we came across the disclosure made by the Respondent in its Balance Sheet for the year 2019-20 regarding the "Related Party relationships/transactions", which is reproduced below:

15. Related Party relationships / transactions warranting disclosures under Accounting Standard – 18 prescribed under section 133 of Companies Act, 2013 are as under:

List of related parties with whom transactions have taken place during the year (excluding reimbursement):

Sl. No.	Name of Related Party	Nature of Relationship	Nature of Transaction	Volume of Transaction	Closing Balance
1	Karina Healthcare Private Limited	Company in which KMP/Relatives of KMP can exercise significant influence	Unsecured Loan Received	NIL (NIL)	4,29,34,267 /- (4,29,34,267/-)
2	Mr.Rabinder Singh	Key Management Personnel	Reimbursement of Expenses	39,979/- (39,979) [No transaction during the Year]	39,979/- (NIL/-)

Related party relations are identified by the management and relied upon by the auditors. Figures in bracket represents previous year's amount.

16. The Company has reclassified, regrouped and rearranged previous year figures, wherever considered necessary to conform to this year's classification.

*[Signature]*

*Saif*



17. EARNINGS PER SHARES

Pursuant to the Accounting Standard – 20, "Earning per Share", issued by the Institute of Chartered Accountants of India, the value of EPS is calculated as below:

Earnings Per Share	Year Ended 31.03.2020	Year Ended 31.03.2019
Net Loss attributable to equity shareholders (₹)	(12,200)	(39,000)
No. of Equity Shares Outstanding	21,600	21,600
Basic EPS	(0.56)	(1.81)

In terms of our audit report of even date annexed

for Jagwani & Associates  
Chartered Accountant  
F.R.No. 026160C

*[Signature]*  
(Gulab Jagwani)  
Proprietor  
M.No. 442121



Place : Gobra Nawapara  
Dated: 10/12/2020

for HN REACON PRIVATE LIMITED

*[Signature]*  
(Rabinder Singh)  
Director  
DIN 06520376

*Saif*  
(Saif Ali)  
Director  
DIN 07519715



15. That on perusal of the aforesaid disclosure regarding the **“Related Party relationships/transactions”** at Sl. No.1 of the in the Balance Sheet of the Respondent, the Applicant Company i.e., Karina Healthcare Pvt. Ltd. is depicted as a “Related Party” to the Respondent i.e., HN Reacon Pvt. Ltd., with *“Nature of Relationship”* being described as *“the KMP/relatives of KMP of the Applicant can exercise significant influence”* on the Respondent Company. However, the applicant has not disclosed the said material fact either in its pleadings or during the hearing before this Adjudicating Authority.

16. Since the balance sheet under reference has been signed by the Directors of the Respondent namely, Mr. Rabinder Singh (DIN 06520376) and Saif Ali (DIN 07519715), we would like to examine whether, these Directors hold Directorship in any other Company from the information available in public domain at the MCA portal.

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Ministry Of Corporate Affairs - MCA Services

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### Ministry of Corporate Affairs

User ID : YASH18LAW

View Director / Designated Partner Details

DIN/DPIN : 06520376

Date: 15/11/2022 04:17:22 PM

Name : RABINDER SINGH

CIN/LLPIN	Name of the Company/ LLP	Current designation of the Director/ Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/ LLP Status	Defaulting status
U45201DL2004PTC125125	OJUS MEDICARE PRIVATE LIMITED	Director	29/10/2012	29/10/2012	-	Active	-
U45201DL2006PTC144801	OJUS FIDELITY HEALTHCARE PRIVATE LIMITED	Director	02/02/2013	08/02/2013	-	Under Liquidation	-
U62200DL2007PLC166678	KARINA AIRLINES INTERNATIONAL LIMITED	Director	30/09/2015	16/07/2015	-	Active	-
U70101DL2004PTC124645	HN REACON PRIVATE LIMITED	Director	30/09/2015	05/08/2015	21/03/2022	Active	-
U70101HR2002PTC099865	HN PROPERTIES PRIVATE LIMITED	Director	29/10/2012	29/10/2012	26/07/2013	Active	-
U72200DL2006PTC150060	HP IT SOLUTIONS PRIVATE LIMITED	Additional Director	10/01/2013	10/01/2013	-	Strike Off	-
U74140HR2003PTC099864	K R CHAWLA CONSULTING PRIVATE LIMITED	Director	15/01/2013	15/01/2013	26/07/2013	Active	-
U74899DL2000PLC106486	GOODWILL HOSPITAL AND RESEARCH CENTRE LIMITED	Director	12/02/2013	12/02/2013	-	Under Liquidation	-
U85110DL2002PTC117618	M AND D HOSPITALS PRIVATE LIMITED	Director	30/03/2015	03/08/2015	04/10/2017	Strike Off	-
U85110DL2008PTC174229	KARINA HEALTHCARE PRIVATE LIMITED	Director	30/09/2014	02/07/2014	12/09/2017	Active	-

[Print](#)**Ministry of Corporate Affairs**

User ID : YASH18LAW

View Director / Designated Partner Details

DIN/DPIN : 07519715

Date: 15/11/2022 04:19:56 PM

Name : SAIF ALI

CIN/LLPIN	Name of the Company/ LLP	Current designation of the Director/ Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/ LLP Status	Defaulting status
U24297DL2005PTC143364	EDEN BIOTECHNOLOGY PVT LTD	Director	30/09/2016	23/05/2016	21/12/2016	Active	-
U45201DL2004PTC125125	OJUS MEDICARE PRIVATE LIMITED	Director	30/09/2016	24/05/2016	-	Active	-
U45201DL2006PTC144801	OJUS FIDELITY HEALTHCARE PRIVATE LIMITED	Director	30/09/2016	26/05/2016	-	Under Liquidation	-
U62200DL2007PLC166678	KARINA AIRLINES INTERNATIONAL LIMITED	Director	30/09/2016	30/05/2016	-	Active	-
U70101DL2004PTC124645	HN REACDN PRIVATE LIMITED	Director	30/09/2016	28/05/2016	21/03/2022	Active	-
U74899DL2000PLC106486	GOODWILL HOSPITAL AND RESEARCH CENTRE LIMITED	Director	30/09/2016	25/05/2016	-	Under Liquidation	-
U85110DL2002PTC117618	M AND D HOSPITALS PRIVATE LIMITED	Director	30/09/2016	20/05/2016	04/10/2017	Strike Off	-
U85110DL2008PTC174229	KARINA HEALTHCARE PRIVATE LIMITED	Director	30/09/2016	27/05/2016	12/09/2017	Active	-

17. That from the DIN details available on the MCA portal as reproduced above, it is clear that Sh. Rabinder Singh (DIN: 06520376) was Director in the Applicant Company i.e., Karina Healthcare Private Limited from 02.07.2014 to 12.09.2017 besides being Director in the Respondent company from 05.08.2015 to 21.03.2022. Furthermore, Mr. Saif Ali (DIN: 07519715) was also Director in the Applicant Company i.e., Karina Healthcare Private Limited from 27.05.2016 to 12.09.2017, besides being Director in the Respondent company from 28.05.2016 to 21.03.2022.

18. We have already noted above in para 3 above that the unsecured loan was disbursed by the Applicant to the Respondent during the period from February 2013 to March 2013 and on 27.08.2015. Thus, it is observed that when the part of the loan was disbursed on 27.08.2015, Sh. Rabinder Singh was Director in both the Applicant as well as in the Respondent Company.



19. From the above, it can be inferred that Sh. Rabinder Singh (DIN: 06520376) was Director in and thus, having control over both the Applicant and the Respondent Company, when the alleged loan was disbursed and payments were being made. In our view, the Applicant has not approached this Tribunal with clean hands as the said fact should have been brought to the knowledge of this Bench.

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;

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.




21. In view of the above, the Applicant has not been able to establish the existence of the debt beyond doubt. **Hence, the Application is dismissed with a cost of Rs.3 Lakh to be deposited by the Applicant with the Prime Minister Relief's Fund, receipt of which shall be duly filed with this Tribunal within a period of 15 days.**

22. A copy of this order be sent by the Court Officer to IBBI for their record.



**(L. N. GUPTA)**  
**MEMBER (T)**



**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (J)**