



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

***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:**

**Vitwo Business Solutions LLP**

**... Financial Creditor/ Petitioner.**

***Versus***

**Medicare Services India Pvt. Ltd.**

**... Corporate Debtor/ Respondent.**

**Date of Pronouncement: January 29, 2025.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SMT. MADHU SINHA, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Petitioner: Ms. Arundhati Barman Ray, Adv.  
Ms. Tamoghna Saha, Adv.**

**For the Respondent: Mr. Tirthankar Das, Adv.  
Ms. Rajashree Bhowmick, Adv.**

**ORDER**

***Per: Bidisha Banerjee, Member (Judicial)***

1. The Court congregated through a hybrid mode.
2. By way of this Section 7 petition, the Financial Creditor Vitwo Business Solutions LLP, hereinafter referred to as "Petitioner" has prayed for the commencement of corporate insolvency resolution process, for brevity "CIRP" in respect of the Corporate Debtor

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**



**Company Petition (IB) No. 226/KB/2024**

Medicare Services (India) Private Limited, hereinafter referred to as “Respondent”.

3. The total amount claimed to be in default is Rs. 1,12,56,666/- which includes the principal amount of Rs. 1,10,00,000/- along with the accrued interest of Rs. 2,56,666/- as of March 18, 2024.

**FACTS IN A NUTSHELL:**

4. The financial creditor had entered into a Loan Agreement on November 01, 2023, with the corporate debtor. In terms of the said agreement, the original sanctioned and agreed amount was Rs. 2 Crore with an interest rate of 14% per annum and an amount of Rs. 1.1 Crore was disbursed on December 01, 2023, which was repayable by March 01, 2024. It is claimed that the corporate debtor has defaulted on monthly interest payments from February 2024 onwards, and thus this petition.

**SUBMISSIONS MADE BY THE PETITIONER:**

5. Ld. Counsel appearing on behalf of the financial creditor submitted that after several intimations and reminders, on April 16, 2024, a Loan Recall Notice demanding the payment within 30 days was issued by the financial creditor, however, no payment has been made by the corporate debtor till date and accordingly, the date of default has been claimed as on May 16, 2024.

6. Ld. Counsel for the financial creditor further submits that the corporate debtor issued a letter along with its account confirmation on March 22, 2024, annexed at pages 53-54, to the financial creditor acknowledging the total outstanding of Rs. 1,13,84,999/-. The Letter dated 22.03.2024 also states that the corporate debtor will

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

allocate the necessary amount to settle the outstanding balance, including the principal amount and accrued interest once the corporate debtor received the balance amount of loan as per the loan agreement.

**ARGUMENTS ADVANCED BY THE RESPONDENT:**

7. *Per contra*, Ld. Counsel appearing on behalf of the corporate debtor submits that the present Section 7 petition against the corporate debtor is not complete as the petition does not disclose any record of default.

8. Ld. Counsel appearing for the corporate debtor further submits that the corporate debtor is in the health insurance business for last four decades and after demise of its promoter, the corporate debtor suffered a setback. The corporate debtor entered into a Software Development Agreement on August 07, 2023, with M/s. Benchmark Infotech Services Pvt. Ltd., annexed at pages 13-24 to the application, for establishing a software application in its existing business and further, the board of directors of the corporate debtor by way of several board resolutions has decided to explore and implement necessary financial restricting measures including but not limited to debt restricting, cost reduction initiatives and capital infusion, in order to strengthen the company's financial position and improve its liquidity. In such circumstances, the corporate debtor approached the financial creditor for a friendly accommodation of loan and accordingly, the both the parties entered into the Loan Agreement on November 01, 2023, to extend of a total sum of Rs. 2 Crore, however, the financial creditor after disbursing the first tranche of Rs. 1,10,00,000/- failed to disburse the balance

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

amount which affects the carrying out of the necessary business expansion activities.

9. It is further submitted that the financial creditor was aware of the fact that the corporate debtor requires more funds to implement successfully its software business at the initial stage of establishment and the software development partner of the corporate debtor had also been chasing the corporate debtor for its payment and issued invoices and reminder letter annexed at pages 25-32 to the Reply Affidavit. It is contended that the corporate debtor required further sum of Rs. 5 to 6 Crore to support its operational requirement and strategic initiatives for its software business, and the same has been decided in the board meeting convened on December 01, 2023, the board resolution is annexed at page 33 to the Reply Affidavit. Further, it is contended that at board meeting held on February 01, 2024, the board has approved the raising of Rs. 2 Crore through venture capital investment on an immediate basis, the board resolution is annexed at page 34 to the Reply Affidavit. Further, the board at its meeting on 12.03.2024, resolved that the corporate debtor is unable to repay the loan and accrued interest to the financial creditor and accordingly authorized the management to continue negotiations with the financial creditor to explore alternative repayment option such as restructuring the loan terms or seeking an extension. In view of above submissions, it is asserted that being aware of the facts that the corporate debtor is willing to settle the dispute with financial creditor, instead of supporting the corporate debtor, this Section 7 petition has been preferred.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**



**Company Petition (IB) No. 226/KB/2024**

10. It is further submitted that in March 2024, the talks of settlement were going between the parties and upon request of the financial creditor, the corporate debtor was compelled to issue a letter on March 22, 2024, along with the acknowledgment and confirmation of accounts, for disbursement of the balance amount as per the Loan Agreement. It is contended that it was always understood between the parties that the acknowledgement and confirmation of account were conditional upon the financial creditor disbursing further sum of money and as such no reliance can be placed on the letter dated March 22, 2024.

11. Rival contentions were heard and considered, and the records were perused. Upon consideration of the submissions advanced by both parties and perusal of the records, we came to the following findings:

**ANALYSIS AND FINDINGS:**

12. We find that in terms of the Loan Agreement dated November 01, 2023, at relevant page 46 to the petition that the original sanctioned and agreement amount between the parties was Rs. 2 Crore and initially an amount of Rs. 1.1 Crore was disbursed at the rate of 14% per annum for the terms of 03 month and the interest pay-out mechanisms was agreed as with 7<sup>th</sup> day of every month.

13. Further, it is evident from page 36 to the petition that the terms of disbursement as agreed by the parties are as under:

*“v. The Borrower can avail this facility by tranches at any number of times from the date of sanction letter unless it is cancelled by the Lenders. However,*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

*at any point of time the aggregate loan amount of all the tranches of Loans together shall not be more than the Facility amount mentioned in Schedule of this agreement.*

*vi. Notwithstanding what is stated hereinabove, the Borrower hereby agrees that the loan is sanctioned by the Lenders on the clear understanding that the Lenders hereby reserves its rights to alter/modify the terms and conditions of the sanction of the loan and/or to stop making further advances and/or cancel the loan and / or recover the Loan in part/full at any time without any prior notice and without assigning any reasons even **though the said loan has not been fully availed of by the Borrower and that any advance / disbursement made by the Lenders** under the Loan shall be repayable by the Borrower on demand by the Lenders.*

14. Further, the terms of “Repayment” as agreed by both parties are, as under:

*“i. The Tenure of the Loan shall be until 01<sup>st</sup> March, 2024.*

*ii. Either party shall be entitled to terminate this Agreement.*

*iii. Till the end of the Tenure or Termination of this Agreement, the Borrower shall not be required to repay the Loan.*

*iv. At the end of the Tenure or Termination, the entire net outstanding, i.e., the principal and the applicable interest accrued thereon, shall be paid by the Borrower to the Lenders or any assignee of the Lenders.”*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

Thus, the allegation made that the financial creditor has not disbursed the full agreed amount in terms of the Loan Agreement, shall not absolve the corporate debtor from the liability of repayment of the amount whatever it has availed in first tranche from the financial creditor.

15. As per the Loan Agreement, the financial creditor has disbursed an amount of Rs. 1.1 Crore for 3 months tenure with an interest rate of 14% per annum and the tenure of the loan, as agreed, is up to March 01, 2024, and this petition has been filed on June 21, 2024. Hence, the threshold is met, and the present petition is well within time.

16. We also note that the Record of default furnished by NeSL as on 20.06.2024, annexed at page 64 to the petition depicts that the total outstanding amount is Rs. 1.1 Crore and the type of debt is financial.

17. Law is well settled by the Hon'ble Supreme Court of India in ***Innoventive Industries Ltd. v. ICICI Bank*** reported in **(2018) 1 SCC 407: MANU/SC/1063/2017**, wherein the Hon'ble Apex Court has observed that the moment the "debt" is due and "default" on part of the corporate debtor is satisfied, the application must be admitted. The Hon'ble Apex Court has 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**



IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA

Company Petition (IB) No. 226/KB/2024

**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, ..."**

XXX

XXX

XXX

**"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)**

18. Further, we are fortified by the views of Hon'ble Apex Court to define "Financial Debt" and initiation of 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:

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

**(Emphasis added)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

In the present case, “disbursement” against “consideration for time value of money” is adequately met.

**(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.”*

**(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)**

19. As all the factors get satisfied for admission of the present case, we are of the view that the present petition is complete in all respects, and it is evidently not barred by limitation. Further, the amount claimed to be in default is far in excess of the threshold limit as prescribed under Section 4 of the I&B Code.

20. In terms of the foregoing discussions, we **ALLOW** the application bearing **Company Petition (IB) No. 226/KB/2024** 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**:

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

- i.** The Petition preferred by **Vitwo Business Solution LLP (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Medicare Services India Pvt. Ltd. (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 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.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

*[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.
- 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 Petitioner has proposed the name of **“Seikh Abdul Salam”** Address: 64J, Linton Street, Kolkata – 700 014, Registration No. IBBI/IPA-003/IP-N00250/2019-2020/12966, Email ID: salam10695@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 “E” at pages 23-24 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

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

Board or Insolvency Professional Agency of ICMAI. In addition, further necessary disclosures have been made by **“Seikh Abdul Salam”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Seikh Abdul Salam”** 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 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.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

- 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 Creditor 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).

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**



- 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.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No. 226/KB/2024**

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

22. Post the Company Petition on **12 /03/ 2025** for hearing the Periodical Progress Report by the IRP/RP as appointed herein.

**Madhu Sinha  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on the 29th Day of January 2025.**

Bose, R. K. [LRA]