

ANNEXURE - A' (10)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/900/2019 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of **M/s. Stemcell Transplantation Assisted
Reproduction Research Pvt. Ltd.**

M/s. Alliance Biomedica Private Limited

Rep. by its Director Mr. J. Kumar,
Reg. Office:- Flat No.15, Ashirwad,
30, Pulliyur, 1st Land, II Main Road,
Trustpuram, Chennai – 600 024

... Operational Creditor

-Vs-

**M/s. Stemcell Transplantation Assisted Reproduction
Research Private Limited**

(in short '**STAR Research Pvt. Ltd.**')
Reg. Off:-

Arun Arcade, 75A First Cross,
North East Extension Road,
Thillainagar,
Tiruchirappalli,
Tamil Nadu – 620 018

...Corporate Debtor

Order Pronounced on **05.05.2020**

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : A. Ganapatheeswaran, Advocate

For Corporate Debtor : Vigneshwar R, Advocate

(1)

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. Under Adjudication is an Application that has been filed by **M/s. Alliance Biomedica Private Limited** (hereinafter referred to as '*Operational Creditor*') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Stemcell Transplantation Assisted Reproduction Research Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U855100TN2016PTC104490 which was incorporated on 02.03.2016 and that its Nominal Share capital and paid up capital is Rs.5,00,00,000/- and Rs.4,00,00,000/- respectively. The Registered Office of the Corporate Debtor as



per the Application is stated to be situated at Arun Arcade, 75A First Cross, North East Extension Road, Thillainagar, Tiruchirapalli, Tamil Nadu - 620 018. Part-III of the Application shows that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the same.

3. From Part-IV of the Application, it is seen that a sum of Rs.53,11,671/-, including interest at the rate of 18% p.a. is being claimed by the Operational Creditor as Operational Debt from the Corporate Debtor. Part V of the Application describes the particulars of the documents, records and evidence of default of the Operational debt which *inter alia* includes the following;

- (i) Purchase Order dated 14.06.2017 and
- (ii) Invoice dated 15.06.2017

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is engaged in the business of sale, service of top-of-the-line health care equipment available to the hospitals in India and further the Operational Creditor is also providing high quality training to the end users on an on-going basis. It is submitted that the Corporate Debtor vide purchase order dated 14.06.2017

placed order with the Operational Creditor for supply of Ultrasonic Surgical Aspirator System with accessories and other products and the Operational Creditor after discount offered the said equipment for a sum of Rs.42,00,000/- and the Operational Creditor has also raised an invoice dated 15.06.2017 for the sum of Rs.42,00,000/-.

5. The Learned Counsel for the Operational Creditor submitted that as per the Purchase order, the Operational Creditor delivered the ordered products to the Corporate Debtor on 01.07.2017. It was submitted by the Learned Counsel for the Operational Creditor that when the staff of the Operational Creditor requested for appointment of installation of the equipments and for training, the Director of the Corporate Debtor has instructed the staff that the installation has to be done in a new location where he is constructing a new hospital and whenever the officials of the Operational Creditor made phone calls for payment of the said sum of Rs.42,00,000/-, the Corporate Debtor delayed the payment by stating some vague reasons. However, in order to continue business relationship with the Corporate Debtor, the Operational Creditor waited for payment by placing trust upon the words of the Corporate Debtor.



6. The Learned Counsel for the Operational Creditor submitted that their staff have made many calls to the Director of the Corporate Debtor and his account team for payment and even they went in person to meet the Director of the Corporate Debtor at Tiruchirappalli in his office on various dates but the same has rendered as a futile exercise. It was further submitted that the Operational Creditor addressed a letter dated 20.12.2018 to the Corporate Debtor for payment and the Director of the Corporate Debtor has called and informed the Operational Creditor that the payment will be done at the earliest and to prove the bonafide, the Corporate Debtor has issued a cheque dated 05.01.2019 bearing No.862546 drawn on ICICI Bank, for a sum of Rs.1,00,000/- towards part payment.

7. The Learned Counsel for the Operational Creditor submitted that they have sent Demand Notice as mandated under Section 8 of IBC, 2016 to the Corporate Debtor on 28.02.2019, however the Corporate Debtor had replied to the said notice by raising vague allegations and disputing the claim of the Operational Creditor. It is submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor has mainly contended that they have not installed the equipment and provided training and that the

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payment would be done only after installation and provisions of training.

8. The Learned Counsel for the Operational Creditor submitted that they have not installed the equipment only on the specific instructions of the Director of the Corporate Debtor and if the Corporate Debtor had made the payment and provided with the proper location for installation, the Operational Creditor is ready to complete the installation and provide necessary training and such a contention raised by the Corporate Debtor is an afterthought, with an intention to escape the payment to be made to the Operational Creditor and the same has been raised after receiving the Demand notice. It was also contended by the Learned Counsel for the Operational Creditor that if there exists a real dispute between the parties, the Corporate Debtor would not have paid to the Operational Creditor a sum of Rs.1,00,000/- towards part payment.

9. The Learned Counsel for the Corporate Debtor has filed reply and has submitted that the present Application filed under Section 9 of IBC, 2016 for initiating Insolvency Resolution Process against the Corporate Debtor is not sustainable in law and facts and it is nothing but an abuse of



process of law. Further it has been submitted that the Operational Creditor is misusing the provisions of the IBC, 2016 with intent to extort monies from the Corporate Debtor. The main contention raised by the Learned Counsel for the Corporate Debtor is that the Operational Creditor is the one who had failed to install the equipments after supplying the same as per the agreed terms and the said equipment is still kept at the same place where it was offloaded and there is no utility value for the equipment. Since the Operational Creditor has failed to fulfil their obligation of installing the equipment and providing proper training to the staff of the Corporate Debtor, the question of payment as per the invoice terms does not arise. It is further submitted by the Learned Counsel for the Corporate Debtor that the Corporate Debtor has suitably replied to the Demand Notice on 09.03.2019 wherein they have stated that the Operational Creditor can either take back the equipments since they were of no utility without installation, or to take necessary steps to immediately install the equipments and provide training for the staff of the Corporate Debtor. Thus, under these circumstances, the Corporate Debtor prayed for dismissal of this Application as filed by the Operational Creditor.

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10. Heard the Counsel for both the parties and perused the records including the documents placed on file.

11. The fact which remains undisputed is that the Corporate Debtor has placed a purchase order dated 14.06.2017 for supply of equipments to the Operational Creditor and based upon the same, the Operational Creditor has supplied the materials and the said materials were delivered at the address given by the Corporate Debtor and the Operational Creditor has also raised invoice in relation to the same on 15.06.2017.

12. The bone of contention raised by the Corporate Debtor is that the Operational Creditor is not entitled to receive any payment as the Operational Creditor has failed to install the equipment in the premises of the Corporate Debtor and also failed to provide adequate training to the staff of the Corporate Debtor in order to operate the said equipment. For proper appreciation of the said contention raised by the Learned Counsel for the Corporate Debtor, it is necessary to peruse the terms and conditions stipulated in the purchase order, which is extracted hereunder;

Terms & Conditions:

- Price : Inclusive of VAT @ 5%
- Delivery : The Delivery will be done within 4 - 8weeks from the date of Confirmed

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Purchase Order. Way Bill has to be issued from your End for delivery of consignment

Installation &
Training :

The installation and training of the system will be done by the Factory trained engineers.

Warranty : **One year** from the date of installation.

13. A careful reading of the terms and conditions of the Purchase order manifests that "the installation and training of the system will be done by the Factory trained engineers" and it does not state that the payments will be made only after Installation & Training of the equipments as alleged by the Corporate Debtor. Further, it may be seen that the delay in installation of the equipments in the premises of the Corporate Debtor is attributable to the Corporate Debtor as the Director of the Corporate Debtor is the one who wants the equipment to be installed in a new place and as such he has delayed in installation of the said equipment and now he cannot plead to the contrary by stating that the Operational Creditor has not installed the equipments and hence they are not entitled for any payments.

14. Further, it may also be seen eventhough the Corporate Debtor has alleged that the Operational Creditor has delayed in installing the equipments at the premises of the Corporate Debtor, the Corporate Debtor has not placed on record any

documents to show, nor any exchange of e-mails between the parties, in relation to the delay in installation of the equipment on the part of the Operational Creditor and as such the Corporate Debtor, with an intent only to evade the payments to be made to the Operational Creditor has raised such a contention, and furthermore the said plea was raised by the Corporate Debtor only after the issuance of the Demand Notice and as such the same cannot be termed as a "pre-existing dispute". All the more, when the terms and conditions of the purchase order do not explicitly state that the payments will be made after Installation of the equipments, such a plea raised by the Corporate Debtor is not sustainable in the eye of law.

15. Also a perusal of the record of proceedings of this Tribunal posits the fact that the Corporate Debtor was negotiating with the Operational Creditor for settlement and this Tribunal also granted sufficient time to the Corporate Debtor to settle the matter, however inspite of sufficient opportunities granted to the Corporate Debtor to settle the matter, the parties have not arrived at the settlement. Thus, after conscientious examination of the records and taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as



filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016.

16. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India appoints **Ms. GANESAN GEETHA** with Registration Number **IBBI/IPA-001/IP-P00857/2017-2018/11439** (*email id:- kumarsgeetha@gmail.com*) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

17. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be



terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

18. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

19. The Operational Creditor is directed to pay a sum of **Rs. 2,00,000/-**-(Rupees Two Lakhs Only) to the Interim Resolution Professional upon the Interim Resolution

Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-
(ANIL KUMAR B)
 MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
 MEMBER (JUDICIAL)

Raymond

Order pronounced by concord in terms of NCLT circular
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 (P.T.O.)