IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-654/(ND)/2021

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s Sital Leasing Finance Limited
Registered office at
Office No – 323, 3rd Floor,
Plaza Commercial Complex,
Mayafield Garden, Sector 47,
Gurgaon, Haryana- 122001

...Applicant/ Financial Creditor

Versus

M/s Reliable Finance Corpn Pvt. Ltd.
Registered office at:
106, T-10 Main Patel Road, Guruarjun Nagar,
Shadi Khampur, New Delhi, 110008
...Respondent/ Corporate Debtor

<u>Coram:</u>

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)
SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

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Present: Counsel for Applicant: Mr. Tanveer Ilahi, Advocate.

Counsel for Respondent: Mr. Mateen Ahmad, Advocate.

ORDER

Per: PSN PRASAD, MEMBER (JUDICIAL)

Date: 04.07.2022

1. This is an application filed by the applicant M/s Sital Leasing Finance Limited on 24.11.2021, through Authorised Representative of Financial Creditor, Mr. Surendra Kumar Jain, duly authrorised vide Board Resolution dated 01.09.2021 to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s Reliable Finance Corpn Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent for an amount of Rs. 1,32,91,986 (Rupees One Crore Thirty Two Lakhs Ninety One Thousand Nine Hundred and Eighty Six) to be paid to the Applicant. The date of Default as per the applicant is 26.04.2021 The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

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- That, the Applicant/ Financial Creditor M/s Sital Leasing Finance Limited, is a company incorporated and registered under the Companies Act, 1956 having its registered office at Office No – 323, 3rd Floor, Plaza Commercial Complex, Mayafield Garden, Sector 47, Gurgaon, Haryana- 122001.
- That the Corporate Debtor approached the Financial Creditor for sanction of Loan of INR 20,00,00,000 (Rupees Twenty Crore) on interest of 18% per annum.
- That, the Applicant sanctioned the loan and entered into a loan agreement on 26.04.2018. The loan will be disbursed as as and when required by the Corporate Debtor as per the Terms and Conditions mentioned in the Loan Agreement.
- That, the agreement shall remain in force for a period of three years unless otherwise extended or determined by the lender.
- That the Corporate Debtor has defaulted in payment of the loan amount and the last payment received from the Corporate Debtor was on 20.03.2021. Thereafter, no payment was made by the Corporate Debtor.
- That the total remaining amount payable by the Corporate Debtor is INR 1,32,91,986 (Rupees One Crore Thirty Two Lakhs Ninety One Thousand Nine Hundred and Eighty Six)

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- That, in view of abovementioned facts the Applicant approached this Tribunal to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

2. Consequent to the notice issued by this Tribunal on 24.11.2021, the Respondent filed its reply in which the following contentions were made:

- That, the Corporate Debtor submits that the filing of present petition is nothing but an abuse of process of law. That, the Corporate Debtor is making arrangements to make payments within reasonable time
- That, if the present petition is allowed it would defeat the ends of justice.
- That, the Corporate Debtor is ready and willing to make payment of the amount demanded by the Corporate Debtor.
- That, the Corporate Debtor has already repaid Rs.19,55,32,000 (Rupees Nineteen Crore Fifty Five Lakhs Thirty Two Thousand) and the Corporate Debtor has full intention to repay the Loan facility availed from the applicant.

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- That, due to bad shape of Economy, Demonitization, Poor Market conditions, the Corporate Debtor is unable to repay the loan amount.
- That, in light of abovementioned facts and circumstances the Corporate Debtor prayed that CIRP should not be initiated.

3. We have gone through Rejoinder, documents on record by both the parties and arguments advanced by counsels of both the parties.

4. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. That while dealing with an application under section 7 the Adjudicating Authority is required to consider the question whether the 'debt' and 'default' is proved or not.

5. That, the Corporate Debtor, in his reply admitted the debt and liability, further vide daily order dated 09.05.2022 the Corporate Debtor has again admitted its liability and has

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expressed its inability to pay the outstanding amount of Rs.1,32,91,986. The contents of said order is reproduced as under:-

> *"Heard the arguments advanced by the Ld. Counsel for the Financial Creditor as well as Ld. Counsel for the Corporate Debtor. Ld. Counsel for the Financial Creditor has submitted that a maximum period of three months can be given if the Corporate Debtor pays the entire outstanding dues.* ***Ld. Counsel for the Corporate Debtor has expressed inability to pay 1,32,91,986/- and also admitted the debt****. Therefore, order in this matter is reserved."*

6. In the light of the aforesaid facts, we find that the Loan agreements executed between the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has defaulted on repayment which is duly admitted by Corporate Debtor.
7. In the interest of justice, this Tribunal has granted ample opportunities to both the parties to explore the possibilities of an amicable resolution of the matter, however, the parties have failed to arrive at settlement.
8. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments

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of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and **initiates** CIRP on the Corporate Debtor with immediate effect.

9. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Mohd Nazim Khan, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IPN00076/ 2017-18 /10207 having email id nazim@mnkassociates.com.

10. Mr. Mohd Nazim Khan has agreed to accept the appointment as the Interim Resolution Professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 18.10.2021. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Mohd Nazim Khan as

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per the requirement of the IBBI Regulations. The applicant has also placed on record the Certificate of Registration of the Insolvency Professional dated 17.05.2017. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

11. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

12. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

14. Mr. Mohd Nazim Khan, having registration number IBBI/IPA-002/IPN00076/2017-18/10207, with email -

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id nazim@mnkassociates.com is appointed as the Interim Resolution Professional.

15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

> *"(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 assets 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*

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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 corporate debtor."

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with

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the provisions of the Code, Rules and Regulations. He shall file his report within 30 days before this bench.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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(P.S.N. PRASAD)
MEMBER (JUDICIAL)