IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH – V

Company Petition (IB) No. 51/ND/2021

In the matter of:
Section9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016

AND
In the matter of :

RELIABLE FINANCE CORPN PRIVATE LIMITED,
106, T-10, Main Patel Road,
Guruarjun Nagar, ShadiKahmpur,
New Delhi - 110008

...Operational Creditor

VERSUS

STELLAR INVESTMENTS LIMITED,
16/121-122, Jain Bhawan, Faiz Road,
WEA Karol Bagh,
New Delhi - 110005

...Corporate Debtor

ORDER DELIVERED ON: 24.02.2022

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Hemant Kumar Sarangi, Hon'ble Member (Technical)

PRESENT: -
For the Applicant/ Operational Creditor: Adv. Mateen Ahmad

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rule,2016 by the Applicant/ operational creditor, i.e. "***RELIABLE FINANCE CORPN PRIVATE LIMITED***" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "***STELLAR INVESTMENTS LIMITED***".

2. We have heard the Ld. Counsel appearing for the petitioner as well as respondent/corporate debtor and perused the averments made in the application, reply, rejoinder as well as the additional affidavit filed on behalf of the respective parties.

3. The claim of the applicant is that on 09.01.2020, the applicant/operational creditor has sold 11645 shares of SNS Diagnostic to corporate debtor @ Rs.99 per share for a total amount of Rs. 1,15,25,000/- and also raised the sales bill of that amount. Despite the several reminders made by the operational creditor, the corporate debtor did not pay the amount.

4. It is further contended thereafter, a demand notice was sent to the corporate debtor on 18.09.2020 which was duly delivered on 19.09.2020. But no reply to the demand notice was sent by the corporate debtor.

5. It is further contended that the applicant has also filed an affidavit under Section 9(3)(b) stating that the no dispute has been raised. For the better appreciation of the facts of the case, a scanned copy of the part -IV is reproduced below: -

Part-IV

	PARTICULARS OF OPERATIONAL DEBT	
1.	TOTAL AMOUNT OF OPERATIONAL DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH OPERATIONAL DEBT FELL DUE.	**Total amount of Debt:** Rs. 1,15,25,000 (One Crore Fifteen Lakhs Twenty Five Thousand Rupees Only) **Details of Transactions** • That the Operational Creditor is a company registered under Companies Act, incorporated on 28.03.1956 under the name and style of **RELIABLE FINANCE CORPN PRIVATE LIMITED** bearing CIN No. U74899DL1956PTC002640. Copy of Master Data downloaded from the official site of Ministry of Corporate Affairs is annex herewith and mentioned as **Annexure 'A'** • That the Corporate Debtor is a company registered under Companies Act, incorporated on 12.08.1980 under the name and style of **STELLAR INVESTMENTS LIMITED** bearing CIN No. U67120DL1980PLC010758. Copy of Master Data downloaded from the official site of Ministry of Corporate Affairs is annex herewith and mentioned as **Annexure 'B'**. • That the Operational Creditor and the Corporate Debtor, came into contact of each other for trading in the shares of SNS Diagnostics Ltd. • On 09th January 2019, the Operational Creditor

		sold 1,16,415 shares of M/s SNS Diagnostics Ltd. at the rate of Rs. 99/- per share, amounting to Rs. 1,15,25,000/- (Rupees One Crore Fifteen Lakhs Twenty Five Thousand Rupees Only), to the Corporate Debtor. The contract note for the sale of aforesaid shares, dated 09th January 2020, executed between the Operational Creditor and the Corporate Debtor is annexed herewith as **Annexure – C.** • The Operational Creditor raised sale invoice No. 83/2019-20 dated 09th January, 2020 upon the Corporate Debtor for payment of Rs. 1,15,25,000/-.The sale invoice raised by the Operational Creditor dated 09.01.2020 upon the Corporate Debtor is annexed herewith as **Annexure – D.** • That the proceeds against sale of the sales to Corporate debtor was payable immediately and thus the amount of Rs. 1,15,25,000/- stood due and payable on the date of transaction i.e. 09thJanuary, 2020. • That the Corporate Debtor demanded confirmation of account from the Operational Creditor as on year end i.e. as on 31.03.2020 for preparation of its annual accounts wherein the Corporate Debtor has showcased its liability towards the Operational Creditor for an amount of Rs. 1,15,25,000/-. The Confirmation of Accounts along with liability confirmed by the Corporate Debtor is attached herewith as **Annexure – E.** • The Operational Creditor contacted the Corporate Debtor for repayment of the outstanding dues several time while the Corporate Debtor always assure of the payment in a week and so, but always failed to honour its promises. • The Operational Creditor then served demand letter dated 18th September, 2020 along with the account confirmation, Sale bill and contract note executed demanding repayment of Rs. 1,15,25,000/- immediately. The Corporate Debtor assured Operational Creditor to clear the dues within the week, but the dues were never cleared. Copy of demand letter and its proof of service and delivery are attached

		herewith as **Annexure-F.** • The Operational Creditor finally issued demand notice upon the Operational Creditor in form 4 as prescribed under section 8 of the Insolvency and Bankruptcy Code, 2016 and Rule 5 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, on 08th December, 2020 to make the payment of outstanding dues immediately. The copy of demand notice along with service and delivery proof is annexed herewith as **Annexure – G.** • The Corporate Debtor was liable to honour the sale bill on the same day as the date of transaction, but till date no amount has been received inspite of several reminders. That the Corporate Debtor neither adhered to its timelines nor replied to the demand notice of the Operational Creditor. • That it is humbly submitted that the Corporate Debtor has failed to pay the said operational debt till date which is evident from the bank statement annexed as **Annexure – H** and whenever Operational Creditor asked for the payment, Corporate Debtor always come up with false assurance. It is apparent that the intentions of Corporate Debtor have turned dishonest and they intentionally fail to repay the aforesaid mentioned operational debt. • That it is also pertinent to mention that Operational Creditor made all the efforts to maintain the business relation but ultimately, when Operational Creditor was left with none other option, the present application is hereby filed before the Hon'ble Tribunal.
	AND THE DATE FROM WHICH SUCH OPERATIONAL DEBT FELL DUE	• That the outstanding sum amounting to **Rs. 1,15,25,000/- (Rupees One Crore Fifteen Lakhs Twenty Five Thousand)** remains unpaid as on date and it fell due from the date of transaction i.e. from 09.01.2020, as the same was payable with immediate effect.

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED	The total amount claimed to be in default as on date is Rs. 1,15,25,000/-. The date of default is 09.01.2020 i.e. the day when the Corporate Debtor failed to make payment against Sale bill No. 83/2019-20 to the Operational Creditor.

6. The corporate debtor has appeared and filed his reply and in paras 4 & 5 of the reply, the corporate debtor has admitted that an amount of Rs. 1,12,75,000/- is due and payable by the corporate debtor to the operational creditor. The relevant Paras are reproduced below:-

> 4. That the Respondent against the said outstanding amount of Rs. 1,15,25,000 has made the payment of the amount of INR 2,50,000 in the bank account of Applicant on 05.01.2021. The bank statement evidencing the payment of INR 2,50,000 is marked and enclosed as **Annexure-2.**
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> 5. That the Corporate Debtor/ Respondent Company had full intentions to pay the balance amount of INR 1,12,75,000 but due to bad shape of economy, poor market conditions due Covid-19 the Respondent has suffered continuous losses and has not been able to pay the balance amount.

7. During the pendency of this application, the applicant has also filed a supplementary affidavit for replacement of IRP and the written consent of the IRP is at page 5 of the additional affidavit filed on 25.08.2021.

8. Ld. Counsel for the corporate debtor in the course of hearing admits that there is a default in making the payment of the amount.

9. Now, in terms of the averments referred to in application, reply, rejoinder and affidavit, we consider the prayer of the applicant. Since the respondent by filing reply in paragraphs 4 & 5 has acknowledged the debt. Therefore, we are of the considered view that the applicant has succeeded to establish that the invoice amount referred to in part-IV of the application i.e. 1,15,25,000/- has not been paid. Of course, by filing the reply, the Ld.

Counsel for the corporate debtor has submitted that, out of that amount, Rs. 2,50,000/- has already been paid but still the defaulted amount is more than Rupees one crore.

10. In sequel to the above, in terms of Section 9 (5) (i) IBC 2016, the applicant/operational creditor has succeeded to establish this fact that the application is complete, the operational debt has not been paid, the demand notice has duly delivered and no notice of dispute has been raised by the corporate debtor and there is no disciplinary proceedings pending against the corporate debtor.

11. **Accordingly, we hereby ADMIT the petition**. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

> *(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
>
> *(b) transferring, encumbering, alienating or disposing of by the corporate debt or 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 Securitisation 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.*
>
> *Further:*
>
> *(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.*

> *(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. (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."*

12. Since the operational creditor by filing additional affidavit has proposed the name of **Mr. Mohd Nazim Khan**, Insolvency Professional having **IBBI Regn No: IBBI/IPA-002/IP-N00076/2017-18/10207** and **E-mail: nazim@mnkassociates.com (Mobile: +91-9818156340)** duly empanelled with the IBBI as the IRP. Accordingly, he is appointed as IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

13. The Operational Creditor is directed to deposit a sum of Rupees one lakh to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

14. Copies of the order be sent to both the parties as well as to the IRP.

Sd/- Sd/- 02-2022

Hemant Kumar Sarangi
(Member Technical)

Abni Ranjan Kumar Sinha
(Member Judicial)