

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) 3699/MB/2018

Under Section 9 of the I&B Code, 2016
In the matter of

P&P Legal

....Operational Creditor

v/s.

Reliable Spaces Private Limited

....Corporate Debtor

Order Delivered on 22.02.2019

Coram: Hon'ble Mr. V.P. Singh, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr. Rahul Dev and Mr. Ranjit Shetty, Advocates
For the Respondent: Mr. Kumar Anish Singh, Advocate

Per Ravikumar Duraisamy, Member

ORDER

1. It is a Company Petition filed under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) by P&P Legal, Petitioner or Operational Creditor against Reliable Spaces Private Limited, Respondent or Corporate Debtor, to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor on the grounds that as on 30.08.2018 the Corporate Debtor has defaulted in making payment of ₹3,43,125/- including interest, that is due in lieu of the legal services provided by the Petitioner.
2. The Petitioner has submitted that it is a State Bank of India (**SBI**) empanelled Law firm and was approached by the Respondent through its Chartered Accountants/Financial Consultants Mr. Gaurav Mehta and Mr. Tarak Gor of Pristine Advisory Services (**Consultants**), seeking its expert legal services for ascertaining the legal compliances, drafting, reviewing, revising and finalising various documents concerning the loan facility proposed to be availed by Respondent from SBI.
3. The Petitioner has stated in Part-IV of its Form-5 that the Respondent vide an application dated 07.05.2015 applied to SBI

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 3699(IB)/MB/2018

for a Lease Rental Discounting Term Loan of ₹165crores for 10 years. It is also stated that SBI vide its sanction letter dated 04.08.2015 sanctioned the loan. It is after this sanction letter that the Respondent approached the Petitioner for its services.

4. The Petitioner has annexed to the Petition a letter of SBI dated 04.08.2015 addressed to the Respondent Company mentioning that it has sanctioned LRD Term Loan of ₹165crore for a period of 10 years and the sanction is valid for a period of two months and the Company shall arrange to complete all the formalities at the earliest.
5. The Petitioner states that its fee was accepted orally and communicated to the Respondent through its consultants. The Petitioner was provided with certain documents of the Respondent Company on the basis of which the Petitioner communicated the legal compliances required to be completed for entering into loan transaction to the consultants.
6. The Petitioner states that it drafted and reviewed the Loan Agreement, Deed of Hypothecation, Escrow Account Agreement, Power of Attorney etc. for the Respondent Company on instruction from the Consultants of the Company. The said documents were sent by the Petitioner to the Corporate Debtor, its Consultants as well as to SBI.
7. The Petitioner raised a 'Bill of Costs' dated 24.09.2015 bearing Bill No. 068/15-16 for an amount of ₹2,25,000/- for professional fee and out of pocket expenses and sent the same to Mr. Gaurav Mehta through e-mail dated 26.09.2015. The said bill and the e-mail is annexed to the Petition.
8. The Petitioner states that before the said loan documents could be executed, the Respondent company took a commercial call to withdraw from the proposed loan transaction and therefore the execution of loan documents was abandoned and the loan was not availed.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 3699(IB)/MB/2018

9. The Petitioner further states that it requested Mr. Tarak Gor, the consultant for the payment of the bill dated 24.09.2015 orally over telephone and through various e-mails.
10. The Petitioner states that on request of Mr. Tarak Gor, the Petitioner raised a fresh 'Bill of Costs' dated 25.07.2016 bearing bill no. 041/16-17 of ₹2,25,000/- and the same was communicated to Mr. Tarak Gor. The Petitioner vide its various e-mails dated 23.01.2017, 15.03.2017, 11.05.2017 and 28.09.2017 requested the Respondent Company and its Consultants to pay the outstanding dues. The Petitioner states that the Respondent deliberately chose to ignore and not responded to the demands of the Petitioner for the payment and did not raise any dispute regarding the legitimacy of the claims made by the Petitioner. The said fresh bill and e-mails are annexed to the Petition.
11. The Petitioner sent a Demand Notice under section 8 of I&B Code dated 09.01.2018 demanding the payment of outstanding amount of ₹2,25,000/- along with interest at 18% p.a. from 01.10.2015. The date of default is stated as 01.10.2015. the Petitioner also attached the e-mails exchanged with the Respondent Company as well as its consultants and the two bills raised for the impugned services provided by the Petitioner.
12. The Petitioner has annexed e-mail of Mr. Gaurav Mehta dated 26.09.2015 addressed to the Petitioner, wherein Mr. Mehta has attached sanction letter with repayment schedule, list of lessee and AoA of Reliable Spaces Pvt. Ltd. The subject of the said e-mail is **"RE: Reliable Spaces – Documentation for SBI loan of ₹165crore"**.
13. The Petitioner has also annexed an e-mail from SBI dated 24.09.2015, addressed to the Petitioner, forwarding the documents to be incorporated in loan documents of Reliable Spaces Pvt. Ltd.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 3699(IB)/MB/2018

14. The Respondent in its reply, dated 17.01.2018, to the Demand Notice denied any outstanding liability to the Petitioner stating that it has not instructed the Petitioner to provide any services. The relevant portion of the said reply dated 17.01.2018 is reproduced below:

"We have never issued any instructions either directly or indirectly for perusing any sanction letter of SBI, making any requisitions and perusing compliances on our behalf and/or drafting/circulating any loan agreements, deed of hypothecation, escrow account agreement, undertaking, indemnity and power of attorney.

Further we would like to inform you that we have never availed any financing/loan-facility from State Bank of India.

Thus, we are not liable to pay towards your impugned invoice as we have not availed any such services nor we have instructed you to provide us any such services.

Therefore, we request you to withdraw the said notice along with the invoices immediately."

15. The Respondent Company in its Affidavit-in-Reply has stated that the Respondent has never instructed the Petitioner to draft any of the alleged documentation as sought to be contended by the Petitioner and therefore is not liable to pay the amounts as demanded by the Petitioner. The Respondent has contended that the Petitioner has failed to bring on record any document showing specific instructions given by the Respondent Company to the Petitioner to draft documents for obtaining loan from State Bank of India.
16. The Petitioner in its affidavit in rejoinder has stated that the Respondent has deliberately chosen not to deal with the role of its Consultants who approached the Petitioner on behalf of the Respondent. It is stated that the Respondent has not denied that

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 3699(IB)/MB/2018

the Consultants were acting under the instructions of the Directors of Respondent. It is also stated that the Respondent has neither denied the e-mail reminders sent by the Petitioner to the Respondent and its Consultants nor the fact that the Respondent never replied to any of the said e-mails of the Petitioner.

17. We have heard the Ld. Counsels appearing on behalf of both the sides and perused the records.
18. When a section 9 petition is filed before this Tribunal, we have to admit the application if the application is complete in all respects; there is no payment of unpaid operational debt; the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; no notice of dispute has been received by the operational creditor.
19. The Petitioner has annexed to the Petition a computation of total amount of default and the days of default. The Petitioner has also annexed its bank account statement for the period 01.10.2015 to 31.08.2018 to show that it has not received any money from the Respondent. The Petitioner has sent its Demand Notice dated 09.01.2018 under section 8 of I&B Code which was received on 11.01.2018 and replied by the Corporate Debtor by its letter dated 17.01.2018.
20. The petitioner in the present petition has submitted copy of various e-mails sent by the Petitioner to the Respondent Company, its consultants. The Petitioner has annexed SBI letter sanctioning the loan to the Corporate Debtor and the e-mails of Mr. Gaurav Mehta, the alleged consultant of the Respondent Company, sharing information regarding the loan transaction as stated by the Petitioner.
21. The Respondent has simply denied any instruction from it to the Petitioner specifically requiring its services. From perusal of the e-mail correspondence as transpired between the Petitioner and the Consultants, it is clear that the Petitioner has communicated their

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 3699(IB)/MB/2018

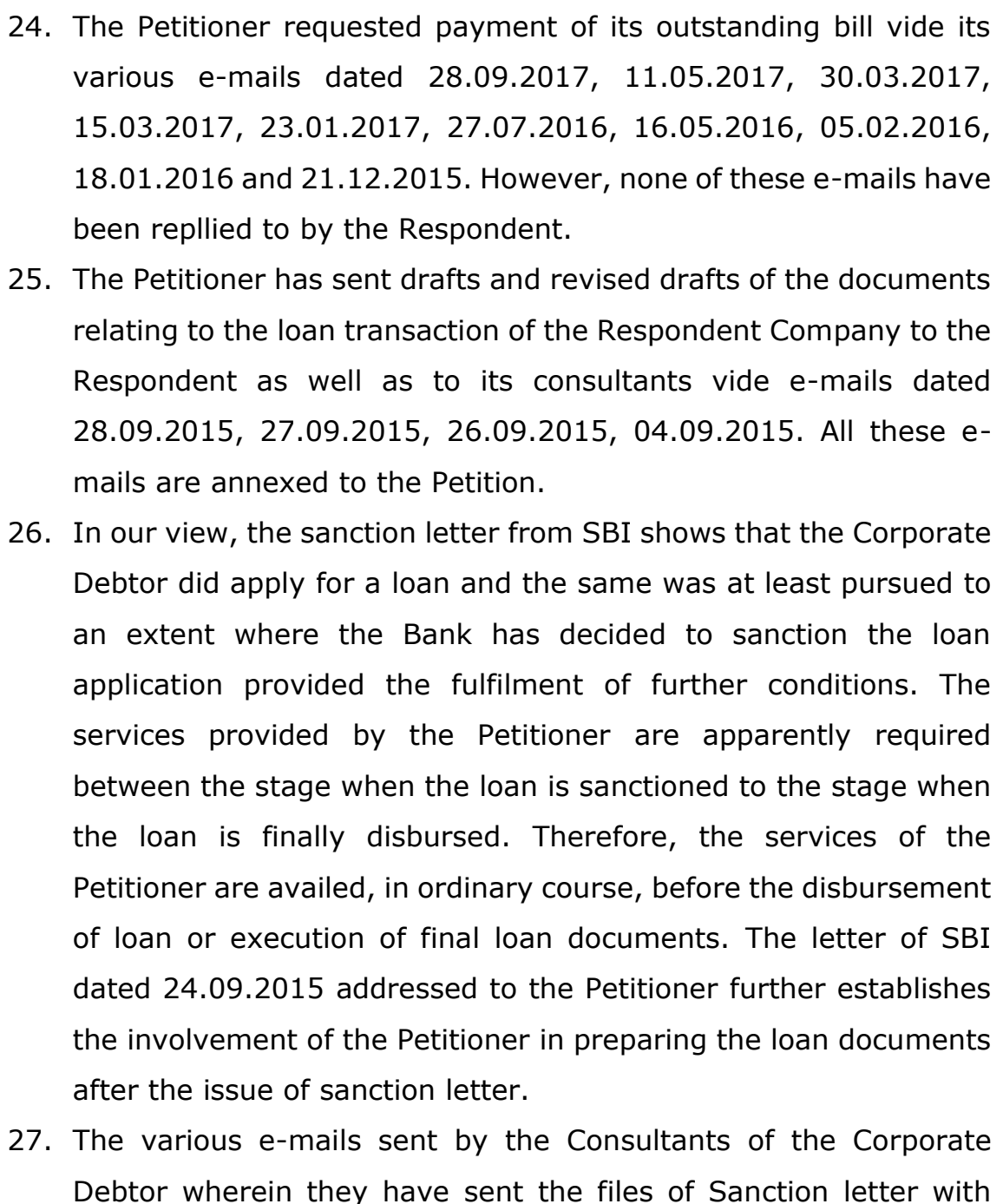
draft documents, requirement of information and documents of the Corporate Debtor with regard to SBI loan sanction and the invoices to the consultants as well as to the Corporate Debtor. The Corporate Debtor has not denied its liability to the Petitioner through reply to any of the e-mails of the Petitioner neither has it disputed that the actions and role of its consultants.

22. For the sake of brevity, a particular e-mail of the Petitioner is reproduced below:



23. The consultant of the Corporate Debtor in reply to the above e-mail sent the following e-mail:

CP 3699(IB)/MB/2018



**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 3699(IB)/MB/2018

repayment schedule, List of lessee and AOA of Reliable Spaces Pvt. Ltd. emphasise that the documents of the Corporate Debtor were sent to the Petitioner on Petitioner's specific request for the same.

28. Over and above all these things the Petitioner has regularly sent e-mails referring to the sanctioned loan, demanding information about the Corporate Debtor, attaching draft loan documents, sending its bills and demanding payment for the bills. These e-mails were sent to the Corporate Debtor, the Consultants and the SBI too. It seems that the Corporate Debtor has simply denied its liability relying upon absence of any specific communication from its end. However, the Corporate Debtor has failed to explain its inaction upon communications being made in its regard with its consultants as well as with SBI that has sanctioned loan. It is not the case of the Corporate Debtor that the Consultants referred to are not related to it as its Chartered Accountants/Financial Consultants. The Corporate Debtor has also not disputed the Sanction Letter from SBI.
29. Thus, mere silence cannot be taken as denial in these particular facts and circumstances. Rather, the Corporate Debtor had ample opportunity to raise dispute denying the various e-mails addressed by the Petitioner regarding the services rendered by the Petitioner but it chose not to do so and now it is estopped from belatedly saying that it did not instruct the Petitioner to extend its services.
30. Therefore, there is a clear default on the part of the Corporate Debtor in making payment against the services provided by the Petitioner and there is no existing dispute regarding the same.
31. The Petitioner has not proposed name of any resolution professional to be appointed as Interim Resolution Professional.
32. The application made by the Petitioner is complete in all respects as required by law and it clearly shows that the operational debt has not been paid by the Corporate Debtor.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 3699(IB)/MB/2018

ORDER

The petition filed under Section 9 of Insolvency and Bankruptcy Code, 2016 is admitted. We further declare moratorium U/S 14 of the I & B Code with consequential directions as mentioned below:

- I. That this Bench at this moment prohibits:
 - 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 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.
- II. It is further made clear that:
 - a. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - b. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - c. That the order of moratorium shall have effect from 22.02.2019 till the completion of the corporate insolvency

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 3699(IB)/MB/2018

resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

d. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

e. That this Bench hereby appoints Mr. Anis Gupta having registration number IBBI/IPA-002/IP-N00285/2017-18/10843 as Interim Resolution Professional to carry the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

33. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of e-mail or whatsapp.

Sd/-

RAVIKUMAR DURAISAMY

Member (Technical)

Sd/-

V.P. SINGH

Member (Judicial)

22nd February, 2019