

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

CP (IB) No.506/MB-IV/2021
Under Section 9 of the IBC, 2016

In the matter of

Shirpur Gold Refinery Limited
[CIN: L51900MH1984PLC034501]
...Operational Creditor
v/s.

**M/s Balmukh Goldjewel & Multitrading
Private Limited**
[CIN: U74110PN2016PTC165024]
...Corporate Debtor

Order Delivered on:20.09.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Ms. Namrata Biyawat, Ld., i/b
NB Legal, Advocate.

For the Respondent:

Mr. Avinash R. Khanolkar, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **Shirpur Gold Refinery Limited**, (“the Operational Creditor”), [CIN: L51900MH1984PLC034501] seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Balmukh Goldjewel & Multitrading Private Limited** (“the Corporate Debtor”), [CIN: U74110PN2016PTC165024].

2. The Corporate Debtor is a company incorporated on 16.06.2016 under the Companies Act, 2013, as a private company limited by shares with the Registrar of Companies, Maharashtra, Pune. Its registered office is at Office No. 1, Sn. 57/3, Mayura Vihar Blg-Q Kothrud Pune Pune Mh 411029. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of Rs.142,02,27,019/- (Rupees one forty-two crore two lakh twenty- seven thousand nineteen only) including the interest @ 24% p.a accrued till 12.03.2021 and default charges @ 1% p.a. till 12.03.2021. The date of default is 24.12.2019 (as per the last date of invoice).
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor submits that the Corporate Debtor has purchased precious metal in the year 2019 from the Operational Creditor. The Operational Creditor has supplied precious metal to the Corporate Debtor and raised invoices for the same.
 - b) The Operational Creditor submits that, the total of the invoices raised upon the Corporate Debtor amounted to Rs. 93,76,66,651/- which are annexed at pp 30-55 of the petition.

Sr. No	Date of Invoice	Amount (in Rupees)
1.	10.08.2019	2,83,15,833
2.	14.08.2019	2,79,05,416
3.	16.08.2019	1,59,10,382
4.	20.08.2019	2,34,35,509
5.	23.08.2019	1,92,72,133

6.	26.08.2019	1,15,58,765
7.	28.08.2019	1,92,76,363
8.	30.08.2019	1,15,69,866
9.	31.08.2019	2,70,25,243
10.	05.09.2019	11,21 22 948
11.	06.09.2019	17,99,08,916
12.	07.09.2019	9,68,84,275
13.	11.09.2019	20,19,39,100
14.	16.09.2019	10,59,27,734
15.	30.10.2019	5,16,65,268
16.	16.12.2019	49,48,900

c) The Last date of invoice is 23.12.2019 which is placed at p.55 of the Petition. The date of default as per the mode of payment in the last invoice is 24.12.2019.

d) The Operational Creditor had served a Demand Notice in Form 3 dated 12.03.2021 to the Corporate Debtor which is at pp 56-63 of the Petition in terms of section 8 of the IBC. The said Demand Notice was served on the Corporate Debtor on 06.04.2021. The Corporate Debtor has not filed replied to the Demand Notice.

5. The case of the Corporate Debtor is as under:

a. The Counsel for the Corporate Debtor was present at the time of hearing and admitted that he is not able to pay the debts to the Operational Creditor and choose not to file the reply to the main Company Petition despite giving opportunities to file reply in the matter. The Main CP was reserved for order on 15.07.2022.

Findings:

6. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
7. The Last date of invoice is 23.12.2019 and the date of filing is 06.04.2021 and it is well within the Limitation. This Bench has jurisdiction to deal with this Company Petition.
8. It is also noticed from the petition that-
 - a) There is unequivocal admission of liability on the part of the Corporate Debtor in its email dated 11.03.2021 sent to the Operational Creditor at p.26-27 of the Petition;
 - b) The date of default is 24.12.2019;
9. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC, as per the date of filing of this petition. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority hereby admits this Petition and orders initiation of CIRP against the Corporate Debtor.
10. The Operational Creditor has proposed Mr. Sandeep Jawaharlal Singhlal as Interim Resolution Professional (IRP) in the matter.
11. Under these circumstances, this Tribunal is of the considered opinion that the above company petition is liable to be admitted by passing the following order

ORDER

12. The petition bearing **CP (IB) No 506/MB-IV/2021** filed by **Shirpur Gold Refinery Limited**, (“the Operational Creditor”), [CIN: L51900MH1984PLC034501] under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Balmukh Goldjewel & Multitrading Private Limited** (“the Corporate Debtor”), [CIN: U74110PN2016PTC165024], the Corporate Debtor, is **admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- b) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) Mr. Sandeep Jawaharlal Singhal, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00519/2017-2018/10920. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall

carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- f) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- h) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- i) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-
Manoj Kumar Dubey
Member (Technical)
20.09.2022

Sd/-
Kishore Vemulapalli
Member (Judicial)