

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

C.P. (IB) 3474/MB/2019

Under Section 8 & 9 of the IBC,
2016

In the matter of

Hindoostan Mills Limited

3rd Floor, Sir Vithaldas Chambers,
16 Mumbai Samachar Marg, Fort,
Mumbai- 400001

.... Petitioner

v/s.

R & M Rasayana Private Limited

A-3028, Oberoi Garden Estate, Off
Saki Vihar Road, Chandivali,
Andheri (east), Mumbai,
Maharashtra- 400072

.... Corporate Debtor

Order Delivered on 18.12.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. Pallavi Nimkar, Adv. Saif Dingankar, Adv.
Simranjeet Kaur Azad, Adv. Tariq Lambe

For the Corporate Debtor: None Present

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This Company Petition is filed by Hindoostan Mills Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against R & M Rasayana Private Limited(hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹23,94,279/-, by invoking the provisions of Section 8

and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition reveals that the Corporate Debtor approached the Petitioner for supply of chemicals and carbon fabrics. The Petitioner sold and delivered the goods/materials as demanded by the Corporate Debtor during the period from October, 2017 to March, 2018 and raised various invoices upon the Corporate Debtor after each and every delivery of goods/materials. The said invoices were also delivered to the Corporate Debtor along with the goods covered thereunder and the amount of the invoices were to be paid by the Corporate Debtor within a period of 60 days from the date of issue of the invoice. The following are the eight invoices that were raised by the Petitioner upon the Corporate debtor:

Sr. No.	Invoice No.	Invoice Date	Invoice Amount	Balance as on 31.07.2019
1.	11090	05.10.2017	3,94,240	-
2.	100	12.10.2017	1,45,920	-
3.	163	06.12.2017	4,74,950	2,25,306
4.	181	20.12.2017	1,81,425	1,81,425
5.	11174	17.01.2018	71,980	71,980
6.	216	17.01.2018	9,09,485	9,09,485
7.	247	28.02.2018	3,73,175	3,73,175
8.	251	19.03.2018	1,18,000	1,18,000
	Total		30,86,713	18,79,371

3. The Counsel for the Petitioner submits that the invoices, gate pass, lorry receipt/airway bill/POD's copy were duly signed by the Corporate Debtor on the receipt of goods. The Corporate Debtor fully paid the amount of invoice no. 1 & 2 and partly paid the amount of invoice no. 3. However, the Corporate Debtor failed and evaded to make any payment thereafter and this Petition was filed by the Petitioner. The Petitioner has produced a statement of confirmation of accounts for the period 01.04.2017 to 31.03.2018, which bears the signature and seal of the Corporate Debtor.
4. The Counsel for the Petitioner submits that one Mr. Mangesh Shukla, the Manager-Accounts through an email dated 03.08.2018 sent to the Petitioner assured of releasing payment soon before September, 2018 on behalf of the Corporate Debtor. Even after several reminders, the Corporate Debtor failed to make any payment. Resultantly, the Petitioner issued Demand Notice dated 19.02.2019 in Form 3, under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding payment of ₹24,02,320/-.
5. The Corporate Debtor through its letter dated 19.03.2019 to the said demand notice acknowledged the debt amount as follows:

"Dear Sir,

This is in with reference to the above-mentioned subject; the notice which we have received on dated 21.02.2019 regarding the outstanding payment. As per the discussion had in the meeting held on dated 11.03.2019 in your office Hindoostan Mills Limited at Mumbai, Samachar Marg, Fort in presence of Dr. Gopal Raj, Mr. Rajiv Ranjan and Mr. Sahil Mhatre, we have mutually agreed upon the terms mentioned below in this letter.

As per the final conclusion of this meeting, within 3 months we will release the pending payment of Rs. 25 lacs in two phases. In the first phase, we will release payment of Rs. 15 lacs in

thethmonth of April, 2019. In the second phase, we will give the PDC of Rs. 10 lacs for the month of July, 2019.

We really appreciate your patience and co-operation.”

6. The Counsel for the Petitioner also annexed the letter dated 08.08.2019 from the HDFC Bank confirming that there is no payment from the Corporate Debtor in the account of the Petitioner after 15.05.2019.
7. The Counsel for the Corporate Debtor was served with the Petition and date of hearing was also intimated to him by the Petitioner. Despite the receipt of notice, the Corporate Debtor did not appear for the hearing on 25.10.2019. The Counsel for the Petitioner was heard and the matter was reserved for orders.
8. On the perusal of the above facts, it is clear that the Corporate Debtor has defaulted in making payment of outstanding amount of ₹18,79,371/- under the invoices claimed by the Petitioner. The Petitioner vide his notice under Section 8 of IBC sought to claim an amount of ₹24,02,320/-, but the outstanding amount as claimed in Form-5 of the Petition confirms that he is restricting his claim to the outstanding balance as per the table of claim annexed to the Petition. Further, the interest claimed by the Petitioner cannot be granted as the invoices annexed to the Petition does not provide for payment of interest, therefore, it can be said that there is no contract of payment of interest between the parties. Hence, there is a clear debt and default.
9. Mr. Raj Kumar Dad, having office at L-302, Sankeshwar Nagar Society, Ashok Van, Anand Hotel, Dahisar East, Mumbai- 400068, having email address rajkdad@gmail.com, having Registration No. IBBI/IPA-001/IP-P00537/2017-18/10962 has given his consent in Form No. 2 to act as an Interim Resolution Professional.
10. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of

Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) that the order of moratorium shall have effect from 18.12.2019 till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) that this Bench hereby appoints Mr. Raj Kumar Dad, having office at L-302, Sankeshwar Nagar Society, Ashok Van, Anand Hotel, Dahisar East, Mumbai- 400068, having email address rajkdad@gmail.com, having Registration No. IBBI/IPA-001/IP-

P00537/2017-18/10962 as Interim Resolution Professional to carry the functions as mentioned under the Code.

11. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-

V. Nallasenapathy
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)