

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

C.P. No. 1362/I&BP/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Neil Resources Company

New Anand Bhavan, 310, 3<sup>rd</sup> Floor, Narsinath  
Street, Bhat Bazaar, Masjid Bundar, Mumbai  
- 400 009

.... Petitioner

v/s.

Resurgere Mines & Minerals India Limited

15, Morvi House, 28/30, Goa Street, Ballard  
Estate, Mumbai - 400 038

.... Corporate Debtor

Order delivered on: 11.09.2019

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

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

For the Petitioner : Ms. Vaidehi Deshmukh, Advocate.

For the Corporate Debtor: None Present.

*Per: V. Nallasenapathy, Member (Technical)*

**ORDER**

1. This Company Petition is filed by Neil Resources Company (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Resurgere Mines & Minerals India Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 10.04.2017 in making payment of Rs. 1,60,00,000/-, 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 Petitioner is engaged in the business of mining and raising & selling of metals/iron ores etc.

3. The Corporate Debtor entered into a Memorandum of Understanding (MOU) on 02.07.2012 for raising and selling of iron ore, with one M/s. V9 Resources



Private Limited. In 2015 V9 Resources Private Limited conveyed its inability to single handedly complete the excavation and selling of iron ore and hence requested the Corporate Debtor to transfer all its rights, liabilities and duties under the aforementioned MOU in the name of the Petitioner and in view of the same the Petitioner has sub-contracted the work of raising and selling of iron ores from the Corporate Debtor. Accordingly, on 18.03.2015 the Corporate Debtor, the Petitioner and M/s V9 Resources Private Limited entered into a MOU wherein the Petitioner sub-contracted the work of raising and selling of iron ores from the Corporate Debtor by paying of Advance Interest Free Security deposit of Rs. 1,60,00,000/- to the Corporate Debtor.

4. It is submitted that the Corporate Debtor failed to get approval/permissions from the concerned authorities to execute the work in terms of the MOU and hence the Petitioner by a letter dated 10.04.2017 addressed to the Corporate Debtor terminated the MOU as per clause 21 of MOU and demanded the refund of Advance Interest Free Security deposit Rs. 1,60,00,000/- paid upon execution of MOU. The Corporate Debtor by its reply dated 14.04.2017 stated that the approval from the concerned authorities are taking more time and requested the petitioner to give them 6 month's time to get the required approvals.

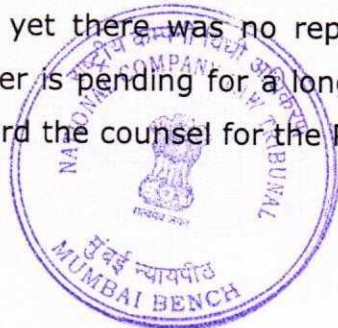
5. The Petitioner by letters dated 05.11.2018 and 23.11.2018 demanded the refund of advance amount from the Corporate Debtor. In response to the aforesaid letter, on 06.12.2018, the Corporate Debtor replied as below:

*"we are in severe financial problems. Our mining work has stopped because of various reasons. We want to pay your advance, but financial condition does not allow us to pay right now.*

*We believe you will understand our problem and give us 2 months to repay your advance."*

6. The Petitioner, on 12.02.2019 issued a Demand Notice demanding a sum of Rs. 2,26,00,000/- including interest @15% p.a. under Section 8 of the Code. However, there was no reply from the Corporate Debtor for the Demand Notice and the Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no notice of dispute given by the Corporate Debtor.

7. The counsel for the Petitioner submitted that the petition was served on the Corporate Debtor and proof of service was filed to that effect. Subsequently, the counsel for the Petitioner intimated the date of hearing to the Corporate Debtor, and the matter was listed on several occasions yet there was no representation from the Corporate Debtor's side. Since the matter is pending for a long time, this Bench is not inclined to give further time, and heard the counsel for the Petitioner.



8. On 29.08.2019, during the hearing of this matter, the Counsel for the Petitioner submitted that the Petitioner is restricting the claim only to the principal amount of Rs. 1,60,00,000/- (Rupees One Crore Sixty Lakhs only) and given up the interest portion of the claim since the advance does not carry any interest as per clause 7 of the MOU.

9. Heard the counsel for the Petitioner. The correspondences cited at para nos. 4 & 5 clearly proves that there is a debt and the Corporate Debtor defaulted in refunding the advance amount.

10. One Mr. Naren Sheth, residing at 1014-1015, Prasad Chamber, Tata Road No. 1, Opera House, Charni Road (east), Mumbai - 400 004; having Registration No. IBBI/IPA-001/IP-P00133/2017-18/10275 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

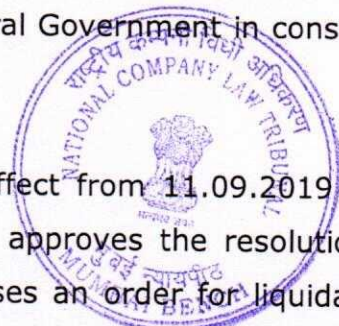
11. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

(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 11.09.2019 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. Naren Sheth, residing at 1014-1015, Prasad Chamber, Tata Road No. 1, Opera House, Charni Road (east), Mumbai - 400 004; having Registration No. IBBI/IPA-001/IP-P00133/2017-18/10275 as Interim Resolution Professional to carry the functions as mentioned under the Code.
12. Accordingly, this Petition is admitted.
13. 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)



Certified True Copy  
Copy Issued "free of cost"  
On 11/10/19  
B. A. Patel  
Deputy Registrar  
National Company Law Tribunal (Mumbai Bench)  
Government of India