

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) 2556/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of

Raksha Bullion,
118/120, Dhanji Street, Silver Plaza, 3rd
Floor, Office No. 9, Mumbai-400003.

At Present:

134/136, Moti Building, 3rd Floor, Shaikh
Memon Street, Zaveri Bazar, Mumbai-
400002

... Petitioner

V/s

Royal Refinery Private Limited,
3-E, Trishla premises Co-op Soc. Ltd., 3rd
Floor, 122, sheikh Menon Street,
Mumbai-400002.

... Corporate Debtor

Order delivered on: 13.11.2019

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner: Adv. Sunila Chavan i/b P. M. Bhansali

For the Corporate Debtor: Adv. Ashok Kumar Dubey,

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. Raksha Bullion (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process against Royal Refinery Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed default to the extent of Rs.4,90,01,183/-, as provided under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition reveals that the Petitioner and Corporate Debtor have been doing business with each other for buying and selling gold bars. The invoices raised by the Petitioner were duly acknowledged by the Corporate Debtor. The invoices were paid on account vide bank payments. The Petitioner annexed invoices (Annexures B1 to B7 and C1 to C39) raised by them demanding payments from Corporate Debtor. The Corporate Debtor has confirmed the balance outstanding of Rs. 4,90,01,182/- on 12.02.2019.

3. The Petitioner annexed the ledger statement of the Corporate Debtor in his books of account for the period from 01.04.2014 to 31.03.2019 which shows that a sum of Rs. 4,90,01,183/ is receivable from the Corporate Debtor and the last payment of Rs. 1,47,24,600/- was made by the Corporate debtor on 26.04.2016. The Petitioner issued Form 4 demanding payment of unpaid invoices amounting to Rs. 4,90,01,182/- from the Corporate Debtor vide demand notice dated 28.01.2019 and 25.03.2019. The ex-director of the Corporate Debtor replied to the said notice on 04.04.2019 and intimated that he has resigned from the directorship and hence requested to eliminate his name from future correspondence and also enclosed form DR-11 quoting his resignation.
4. The Petitioner filed affidavit under Section 9(3)(b) stating that no notice of dispute is given by the Corporate Debtor.
5. The Corporate Debtor filed his objections and denied the contentions of the Petitioner. The Corporate Debtor further claimed that Petitioner has no cogent proof of default placed on record and that Petition under Section 9 is not maintainable. The Corporate Debtor claimed that the invoices attached by the Petitioner are in fact invoices of the Corporate Debtor and that no sales affected by the Petitioner, in fact the Corporate Debtor has supplied materials to the Petitioner. Hence the allegation of outstanding amounts under the invoices does not arise.
6. Heard both the sides. The counsel of the Petitioner relied on the confirmation of the balance given by the Corporate Debtor. The counsel for Corporate Debtor argued that there is no liability of payment of amount to the Petitioner, the notice issued by the Petitioner is not a valid notice.
7. Admittedly, there is a confirmation of debt on 12.02.2019 by the Corporate Debtor, which shows that there is an unpaid amount of Rs. 4,90,01,183/- outstanding payable to the Petitioner which has not been repaid, and the Corporate Debtor has not denied the issuance of the confirmation of balance. If there was no liability, why was the confirmation of balance dated 12.02.2019 issued by the Corporate Debtor. Hence debt and default are proved.
8. One Mr. Nandkishor Vishnupant Deshpande residing at E- 19, SBI Colony, Kumud Nagar S.V. Road, Goregaon (W) Mumbai-400104; having Registration No. IBBI/IPA-001/IP-P01399/2018-19/12181 has given his consent in Form No. 2 to act as an Interim Resolution Professional.
9. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code, admits this petition, 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 13.11.2019 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 Nandkishor Vishnupant Deshpande residing at E- 19, SBI Colony, Kumud Nagar S.V. Road, Goregaon (W) Mumbai-400104; having Registration No. IBBI/IPA-001/IP-P01399/2018-19/12181 as Interim Resolution Professional to carry the functions as mentioned under the Code.

10. 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)