

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.P. (IB) No. 968(PB)/2019**

**IN THE MATTER OF:**

M/s. Oyster Steel and Iron Private Limited

.....Operational Creditor/Petitioner

v.

M/s. Royal Kitchen Appliances Private Limited

.....Corporate Debtor/Respondent

**SECTION: Under Section 9 of The Insolvency and Bankruptcy Code, 2016**

**Judgement delivered on 19.08.2019**

**CORAM:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**

**HON'BLE PRESIDENT**

**SHRI S.K. MOHAPATRA**

**HON'BLE MEMBER (T)**

**PRESENT:**

For the Petitioner: Mr. A.S. Narang, Mr. A.K. Vali and Mr. Rajat Jain, Advocates

For the Respondent: Mr. Aditya Gupta and Mr. Rahul Kinra, Advs.

**M.M. KUMAR, PRESIDENT**

**JUDGMENT**

The petitioner-M/s. Oyster Steel and Iron Private Limited has preferred the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'Rules, 2016) with a prayer for triggering the Corporate Insolvency Resolution Process in respect of

Respondent-M/s. Royal Kitchen Appliances Private Limited which has its registered office in New Delhi. The petitioner has not proposed the name of any Interim Resolution Professional and has left it to the discretion of naming one by this Tribunal as such an option is available to us.

2. Brief facts necessary for disposal of the controversy raised in the instant petition are that the petitioner is claimed to have supplied goods and the total outstanding on that account towards Operational Creditor is claimed to be INR 1,82,97,880/- (Rupees One Crore Eighty Two Lakhs Ninety Seven Thousand Eighty Hundred and Eighty Only) including interest on principal debt as on 01.12.2018. The details of the invoices have been given in Form-5 as prescribed under Rule 6 (1) of the Rules, 2016 which have also been annexed with the petition. The petitioner sent a demand notice dated 01.12.2018 to Corporate Debtor under Section 8 of the Code along with the invoices in Form-3 as prescribed under Rule 5 (1) (a) of the Adjudicating Authority Rules, 2016. It was claimed that the aforesaid amount was due and payable.

3. In response a reply to the notice has been sent by the Corporate Debtor and the principal stand taken is that the petitioner is not an Operational Creditor of Corporate Debtor- M/s.

Royal Kitchen Appliances Private Limited as no operational debt is owed to it in accordance with the provisions of Section 5 (21) of the Code, 2016. According to the averments made in para 2 of the reply it is claimed that debt had arisen out of the provisions of goods sold to proprietorship concern namely Royal Appliances in the year 2013 and no goods were ever supplied to M/s. Royal Kitchen Appliances Private Limited; and no transaction took place after the year 2013. It is also the stand of the Corporate Debtor that M/s. Royal Kitchen Appliances Private Limited was incorporated on 24.07.2014 and that the petitioner had on account of its bad financial condition sought some financial help. With the intent to help the petitioner payment for a sum of Rs. 7,50,000/- in the year 2017 was made by the Corporate Debtor in respect of the invoices raised against the proprietorship concern namely Royal Appliances. Similar position is asserted in respect of the payment made on 29.10.2018. It is then submitted in sub para D & E of para 8 that a huge outstanding amount was paid by the Corporate Debtor to M/s. Laxmi Wire Netting and Weaving Factory to settle the accounts as the petitioner owed debt dues payable to them.

4. The first question which emerges for determination is as to how the petitioner could claim the dues of proprietorship concern

namely Royal Appliances from the Corporate Debtor which is incorporated registered entity.

Mr. Narang, learned counsel for the petitioner has argued that alloy ingots were supplied by the petitioner to the proprietorship concern Royal Appliances in year 2013. The Corporate Debtor on 24.07.2014 took over the business of Royal Appliances through 'slump sale'. It also took over the liabilities and assets of Royal Appliances. Learned counsel has drawn our attention to the ledger account in respect of Royal Appliances produced by the Corporate Debtor for the period of 01.04.2013 to 31.03.2014 in respect of the Operational Creditor which shows an outstanding amount of INR 1,90,58,140.00/-. The payment has been made by the Corporate Debtor-M/s. Royal Kitchen Appliances Private Limited as is evident from the ledger for the period 01.04.2014 to 31.03.2015 and the total balance struck is INR 1,51,58,140.00/- as on 31.03.2015. The position is the same in respect of Corporate Debtor-M/s. Royal Kitchen Appliances Private Limited for the period 01.04.2015 to 30.06.2015 and the same amount has been shown to be outstanding by the Corporate Debtor in its ledger from 01.07.2015 to 31.03.2016. The matter does not end here. The Corporate Debtor has made payment on 17.02.2017 and 18.02.2017 to the

Operational Creditor-petitioner through Oriental Bank of Commerce and the balance amount struck is INR 1,44,08,140.00/-. The aforesaid position is set out below in the form of a table:

**“ROYAL APPLIANCES (15-16)**

KHASRA NO.- 15/6/1, VILLAGE JOSHIJAT, SONEPAT ROAD, BAHALGARH,  
DISTT. SONEPAT-131021 HARYANA

**LEDGER**

(From 1-4-2015 to 30-6-2015)

**Account : OYSTER STEEL & IRON PRIVATE LIMITED**

Date	Type	Vch No.	Particulars	Debit (Rs.)	Credit (Rs.)	Balance (Rs.)
01-04-2015			Opening Balance		1,51,58,140.00	1,51,58,140.00 Cr.
			Total	0.00	1,51,58,140.00	
			<b>Credit Balance</b>	<b>1,51,58,140.00</b>		
			<b>Grand Total</b>	<b>1,51,58,140.00</b>	<b>1,51,58,140.00</b>	

**ROYAL KITCHEN APPLIANCES PVT. LTD.**

KHASRA NO.- 15/6/1, VILLAGE JOSHIJAT, SONEPAT ROAD, BAHALGARH,  
DISTT. SONEPAT-131021 HARYANA-131021 India, CIN No.  
U74140DL2014PTC269420

**LEDGER**

(From 1-7-2015 to 31-3-2016)

**Account : OYSTER STEEL & IRON PRIVATE LIMITED**

Date	Type	Vch No.	Particulars	Debit (Rs.)	Credit (Rs.)	Balance (Rs.)
01-07-2015	Jrnl		Dr EQUITY SHARE CAPITAL		1,51,58,140.00	1,51,58,140.00 Cr.
			Total	0.00	1,51,58,140.00	
			<b>Credit Balance</b>	<b>1,51,58,140.00</b>		
			<b>Grand Total</b>	<b>1,51,58,140.00</b>	<b>1,51,58,140.00</b>	

**ROYAL KITCHEN APPLIANCES PVT. LTD.**

KHASRA NO.- 15/6/1, VILLAGE JOSHIJAT, SONEPAT ROAD, BAHALGARH,  
DISTT. SONEPAT, HARYANA-131021 India, CIN No.  
U74140DL2014PTC269420

**LEDGER**

(From 1-4-2016 to 31-3-2017)

**Account : OYSTER STEEL & IRON PRIVATE LIMITED**

Date	Type	Vch No.	Particulars	Debit (Rs.)	Credit (Rs.)	Balance (Rs.)
01-04-2016			Opening Balance		1,51,58,140.00	1,51,58,140.00 Cr.
17-02-2017	Pymt	PYMT1323	Cr Oriental Bank of Commerce (02554015002433)	3,50,000.00		
18-02-2017	Pymt	PYMT1324	Cr Oriental Bank of Commerce (02554015002433)	4,00,000.00		
Total				7,50,000.00	1,51,58,140.00	
<b>Credit Balance</b>				<b>1,44,08,140.00</b>		
<b>Grand Total</b>				<b>1,51,58,140.00</b>	<b>1,51,58,140.00</b>	

**ROYAL KITCHEN APPLIANCES PVT. LTD. 17-18**  
15/6/1, VILLAGE JOSHI JAT, BAHALGARH ROAD, SONEPAT, DISTT.  
SONEPAT, HARYANA-131021, CIN No. U74140DL2014PTC269420

**LEDGER**

(From 1-4-2017 to 31-3-2018)

**Account : OYSTER STEEL & IRON PRIVATE LIMITED**

Date	Type	Vch No.	Particulars	Debit (Rs.)	Credit (Rs.)	Balance (Rs.)
01-04-2017			Opening Balance		1,44,08,140.00	1,44,08,140.00 Cr.
Total				0.00	1,44,08,140.00	
<b>Credit Balance</b>				<b>1,44,08,140.00</b>		
<b>Grand Total</b>				<b>1,44,08,140.00</b>	<b>1,44,08,140.00</b>	

5. The financial position extracted from ledgers above does not leave any manner of doubt that M/s. Royal Kitchen Appliances Private Limited has not only made payment which were due and payable by Royal Appliances-the proprietorship firm but has also acknowledged the debt of Royal Appliances-the proprietorship firm as is evident from the ledger accounts attached with the reply filed by the Corporate Debtor.

6. Confronted with the aforesaid factual position, learned counsel for the Respondent has drawn our attention to averments

made in para 3 & 4 to argue that on the asking of the petitioner it has paid all the dues of Royal Appliances-the proprietorship firm to M/s. Laxmi Wire Netting and Weaving Factory as the petitioner owed huge amount to M/s. Laxmi Wire Netting and Weaving Factory. The case of the Respondent is that the amount owed by the petitioner has now been adjusted having been paid to the Creditor of the petitioner M/s. Laxmi Wire Netting and Weaving Factory. In that regard some adjustment entries have been relied upon.

7. We repeatedly asked learned counsel for the Respondent that is there any resolution passed by the Operational Creditor authorizing the Corporate Debtor to discharge its liability by paying the dues of M/s. Laxmi Wire Netting and Weaving Factory. We also solicited answer to another query with regard to the resolution passed by the Corporate Debtor accepting the assignment of the petitioner's loan to be paid by it. It is well settled that companies do not act orally and the board resolution is the only way to transact the business of a company. There is not even a single document placed on record showing that the petitioner has authorized the Corporate Debtor to make payment on its behalf to M/s. Laxmi Wire Netting and Weaving Factory. It cannot therefore be inferred



by any stretch of imagination that the payment made to M/s. Laxmi Wire Netting and Weaving Factory by the Corporate Debtor could be regarded as payment made on behalf of the petitioner-Operational Creditor. Accordingly, we reject the aforesaid defence taken as it is moonshine.

8. The discussion in the above paras leads us to conclude that Corporate Debtor has undertaken the assets and liabilities of erstwhile proprietorship firm-Royal Appliances and continued making payment to the Operational Creditor in lieu of the alloy ingots supplied by it to the proprietorship firm-Royal Appliances. There is no 'dispute raised' or registered with 'Information Utility' which may become the basis to reject the petition. The aforesaid entries have been made as extracted in the preceding paras in the books of account of the Corporate Debtor itself. The amount is due and payable. The claim made by the petitioner is within the period of limitation and must be regarded as an operational debt within the meaning of Section 5 (21) of the Code, 2016.

9. The Operational Creditor has not named anyone as Interim Resolution Professional and has requested us to appoint one for the Corporate Insolvency Resolution Process. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of

Insolvency Professionals for appointment as Insolvency Resolution Professionals for the period 01.07.2019 to 31.12.2019 in compliance with Section 16 (3) (a) of the Code in order to avoid delay. The list of recommended Insolvency Professionals provides instant solution to NCLT-Adjudicating Authority to pick up the name and appoint anyone. It also helps in meeting the time lines given in the Code and save unnecessary wastage of time in asking the Insolvency and Bankruptcy Board of India to recommend the name and then to appoint such Interim Resolution Professional by NCLT-Adjudicating Authority. Accordingly, we appoint Mr. Sandeep Jain, email id – sandeep@spjca.in, Mobile No. 96541-11115 and Registration No. IBBI/IPA-001/IP-P01740/2019-20/12622 as an Interim Resolution Professional. The aforesaid Interim Resolution Professional has no disciplinary proceeding pending against him nor anything else has been pointed out with regard to his antecedents by IBBI. He shall file his written communication in accordance with Rule 9 of Adjudicating Authority Rules, 2016 and all relevant paper immediately before the Registrar of this Tribunal but not later than two days.



10. As a sequel to the above discussion, this petition is admitted and Mr. Sandeep Jain is appointed as an Interim Resolution Professional.

11. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 9 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

12. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- “(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 Securitisation 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.”

13. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow

best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.



15. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

16. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

17. Before parting we must notice the complaint made against Operational Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the

Corporate Debtor for any such correction if need be and act accordingly by placing it before the Operational Creditor as it is only fair to do so.

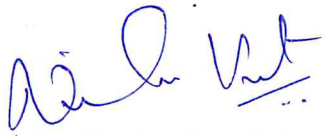
18. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Sd/-  
(M.M.KUMAR) 19.08.2019  
PRESIDENT

Sd/-  
(S.K. MOHAPATRA)  
MEMBER(TECHNICAL)

19.08.2019  
Vineet

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member (T), Shri S.K. Mohapatra is not holding Court today.

  
(NIRMALA VINCENT)  
COURT OFFICER