

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) Insolvency No. 1466 of 2019

[Arising out of Impugned Order dated 13.11.2019 passed by National
Company Law Tribunal, Mumbai Bench in CP (IB) 2556/MB/2019]

IN THE MATTER OF:

**Gaurav Dilipraj Panwar,
Shareholder and Suspended Directors of
M/s. Royal Refinery Private Limited.
(Company undergoing CIRP)
3-E, Trishla Premises Co-op Soc. Ltd.,
3rd Floor, 122, Sheikh Menon Street,
Mumbai – 400002 (Maharashtra)**

....Appellant

Versus

**1. M/s. Raksha Bullion, (Operational Creditor),
118/120, Dhanji Street, Silver Plaza,
3rd Floor, Office No. 9, Mumbai – 400003
(Maharashtra)**

At present:

**134/136, Moti Building, 3rd Floor, Shaikh Memon
Street, Zaveri Bazar, Mumbai – 400002 (Maharashtra)**

**2. M/s. Royal Refinery Private Limited (Corporate
Debtor)**

**Through Shri Nandkishor Vishnupant Dehpande,
Interim Resolution Professional,
E-19, SBI Colony, Kumud Nagar, S.V. Road, Goregaon
(W), Mumbai – 400104 (Maharashtra)**

...Respondents

**For Appellant: Ms. Malvika Trivedi, Sr. Advocate with Mr. Nishant
Bishnoi, Mr. Saurabh Ajay Gupta and Ms. Srishti
Prabhakar, Advocates**

**For Respondent: Dr. Harsh Surana, Ms. Deeplai Surana, Mr. Sandeep
Malik, Advocates for R-1.
Mr. Kaustav Som and Mr. Arjun Krishnan, Advocates
for R-2.**

J U D G E M E N T

[Per: Shreesha Merla, Member (T)]

1. Challenge in this Appeal is to the Impugned Order dated 13.11.2019 passed by the Ld. Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in CP (IB) 2556/MB/2019 admitting the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code'). By the Impugned Order, the Adjudicating Authority has observed as follows:

“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.”

2. Submissions of the Learned Counsel for the Appellant:

- It is submitted that the Adjudicating Authority has ignored the fact that none of the Invoices annexed by the Operational Creditor indicate or correspond to the 'Operational Debt' of Rs. 4,90,01.183/-, which the Operational Creditor has sought to recover from the Corporate Debtor.
- The Adjudicating Authority has not taken into consideration the definition of 'Operational Debt' as defined under Section 5(21) of the Code and also that there is no cogent proof of the default together with

the fact that payment for all the invoices raised in the Application have been duly paid by the Corporate Debtor.

- A Confirmation of the balance sheets dated 01.04.2015 and 01.04.2017 were issued by the Corporate Debtor to the First Respondent, but the same was not in respect of any of the invoices issued during the course of the business transactions.
- It is strenuously argued by the Learned Counsel that the balance sheet for the financial year 2015-16 of the Corporate Debtor reflects the amount 'as an advance' and hence does not fall within the ambit of the 'Definition' of 'Operational Debt' as defined under Section 5(21) of the Code.

3. Submissions of the Learned Counsel for the First Respondent-Operational Creditor:

- Learned Counsel for the First Respondent drew our attention to the ledger statement which clearly shows that a sum of Rs. 4,90,01.183/- is receivable from the Corporate Debtor company.
- It is further submitted by the Operational Creditor that there were transactions of sale and purchase of Goldbars, for which the Corporate Debtor confirmed the balance outstanding as on 12.02.2019. This debt is 'due and payable' for which there is no pre-existing dispute and hence the Adjudicating Authority has rightly admitted the Application filed under Section 9 of the Code.



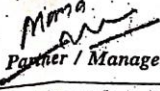
**4. Submissions of the Learned Counsel for the Second Respondent-
Corporate Debtor:**



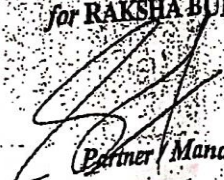
- Learned Counsel for the Second Respondent –Corporate Debtor has denied that any amounts are due and payable by the Company and denied any such business transactions have taken place. It is the case of the Operational Creditor that Corporate Debtor was doing business with the Operational Creditor trading in Goldbars.

Assessment:

5. A perusal of the Invoices raised by the Operational Creditor establishes that the amounts were paid through Bank and were duly acknowledged by the Corporate Debtor. Invoices dated 12.05.2014, 13.05.2014, 23.05.2014, 25.09.2014, 07.10.2014, 25.04.2016 and 26.04.2016, which are part of the record, evidence the transactions of purchase and sale of Goldbars between the Operational Creditor and the Corporate Debtor. Two such Invoices dated 07.10.2014 and 26.04.2016 are reproduced as hereunder:

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	118/120, Dhanji Street, Silver Plaza, 3rd Floor, Office No. 9, Mumbai - 400 003, (M.S.) INDIA Telephone: (+91-22) 2344 0488 / 89 Back Office: (+91-22) 2341 8122/21, Fax: (+91-22) 6631 5950 E-mail: info@rakshabullion.in Website: www.rakshabullion.in	TAX INVOICE Invoice No. : 3730 Date : 07.10.2014			
ROYAL REFINERY PVT LTD 3-E, TRIGLA HIGHSES CO.OP. SOC. LTD., 3RD FLOOR, 122, SHEIKH HEKHON STREET, MUMBAI VAT TIN NO. : 2745089738V * PAN No.: AAFDR0576E * Tel No. : 5560	To 3-E, TRIGLA HIGHSES CO.OP. SOC. LTD., 3RD FLOOR, 122, SHEIKH HEKHON STREET, MUMBAI VAT TIN NO. : 2745089738V * PAN No.: AAFDR0576E * Tel No. : 5560				
Sr. No.	Description	Purity	Weight Gms.	Rate	Amount
1.	GOLD BAR	999	2750.280	27,000.00	74,25,756.00
		Less : Discount			14.00
	DELIVERY AT MUMBAI HAND TO HAND				
Total					74,25,742.00
Add : MVAT 1					74,257.00
Add : Rounded Off					1.00
Grand Total					75,00,000.00
Rs. : Seventy Five Lakh Only.					
PA No. AAHFR2224C VAT TIN No.27860075135 V CST TIN No.27860075135 C Subject to Mumbai Jurisdiction			E & O. E. for RAKSHA BULLION		
<small>We hereby certify that my/our registration certificate under the MAHARASHTRA VALUE ADDED TAX ACT, 2002 is in force on the date on which the sale of the goods specified in this Tax Invoice is made by us/ us and that the transaction of sale covered by this Tax Invoice has been effected by us/ us and it shall be accounted for in the turnover of sales while filing of return & the due tax, if any, payable on the sale has been paid or shall be paid.</small>			 Signature of Purchasers		 Partner / Manager

		134/136, Mott Bhawan, 3rd Floor, Shaikh Memon Street, Zaveri Bazar, Mumbai - 400 002 (M.S.) INDIA Telephone : (+91-22) 22428995 / 22429890 Back Office : (+91-22) 6629 8122 / 21, Fax : (+91-22) 6629 8201 E-mail : info@rakshabullion.in Website : www.rakshabullion.in		TAX INVOICE	
To: ROYAL REFINERY PVT. LTD SE, TRIBLA PREMISES CO. OF. SOC. LTD., 3RD FLOOR, 122, SHEIKH MEMON STREET, MUMBAI VAT TIN No. : 27860075135 V * PAN No. : AAHFR2596E * Tel No. : 5560		Invoice No. : 253		Date : 28.04.2016	
Sr. No.	Description	Purity	Weight Gms.	Rate	Amount
1.	GOLD BAR	99.50	5000.000	Per 10 Gms 29,100.00	145,50,000.00
DELIVERY AT MUMBAI HAND TO HAND					
Total					145,50,000.00
MVAT 1.20					1,74,600.00
Re. : One Crore Forty Seven Lakh Twenty Four Thousand Six Hundred Only.					Grand Total
					147,24,600.00
PAN No. AAHFR222AC VAT TIN No. 27860075135 V CST TIN No. 27860075135 C Subject to Mumbai Jurisdiction			E & O. E. for RAKSHA BULLION		
<small>We hereby certify that my/our registration certificate under the MAHARASHTRA VALUE ADDED TAX ACT, 2002 is in force on the date on which the sale of the goods specified in this Tax Invoice is made by me/us and that the transaction of sale covered by this Tax Invoice has been effected by me/us and it shall be accounted for in the turnover of sales while filing of return & the due tax, if any payable on the sale has been paid or shall be paid</small>			 Signature of Purchasers		 Partner/Manager

6. Learned Counsel for the Appellant drew our attention to the Statement of Account and to the amounts reflected under 12.05.2014 in support of her case that all amounts raised in these invoices were paid. Learned Counsel strenuously contended that this amount was 'an advance paid' and hence does not fall within the purview of the ambit of the

definition of 'Operational Debt'. At this juncture, we find it relevant to reproduce the 'Definition' of 'Operational Debt' as defined under Section 5(21) of the Code:

“5 (21). “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of due arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”

7. It is evident from the Statement of Account that the payments which the Appellant contends have all been made, were not done 'invoice wise'. Not a single payment is reflected as per the invoice raised. It is apparent from the material on record that there is a current account and running account between the Operational Creditor and the Corporate Debtor wherein demands were made, not specific to each invoice raised and therefore the contention of the Learned Counsel for the Appellant that the subject amount 'is an advance' and no services were rendered by the Operational Creditor to the Corporate Debtor, is untenable. It is seen from the Statement of Account that amounts were paid periodically and purchases were made from time to time and invoices raised subsequently. Therefore, this Tribunal is of the earnest view that there were continuous transactions vide invoices raised between the parties to establish a running account. It being a running account, considering the manner in which such businesses are conducted and accounts kept, it would be material to see when the parties concerned treat the 'debt' to be in 'default'. The Adjudicating Authority has rightly relied on the confirmation of debt as shown on 12.02.2019 for an amount of Rs. 4,90,01.183/- and admitted the Application. Additionally, it is pertinent to mention that the contention of the Appellant that this amount is actually

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‘an advance’ and that no services were rendered by the Operational Creditor, was never pleaded in the Reply filed before the Adjudicating Authority to the Demand Notice issued under Section 8 of the Code.

8. For all the aforementioned reasons, this Tribunal is of the considered view that there is no illegality or infirmity with the Order of the Adjudicating Authority and hence this Appeal fails and is accordingly dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Ms. Shreesha Merla]
Member (Technical)**

**New Delhi
20th April, 2022
Basant B.**