



\$~A-8 (2019)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 3rd January, 2022

+ **C.R.P. 251/2019 & CM APPL. 48293/2019**

SIDDHI ENTERPRISES Petitioner
Through: Mr. Parveen Semwal, Advocate
versus

RAJESH PROJECTS INDIA PVT LTD Respondent
Through: None

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned order dated 30th August, 2019 in *CS No. 410/2017* titled *Siddhi Enterprises v. Rajesh Projects India Private Limited* passed by the *ld. ADJ-04 (NW)/ Rohini Courts* (hereinafter “*Trial Court*”) by which unconditional leave has been granted by the Trial Court to the Defendant/Respondent (hereinafter “*Defendant*”).
3. The petition arises out of suit filed by the Plaintiff/Petitioner (hereinafter “*Plaintiff*”) under Order XXXVII seeking recovery of a sum of Rs.14,00,800/- along with interest. The Defendant had filed an application seeking leave to defend and the Trial Court has held that there were triable issues on record which need the test of trial leading to the impugned order.
4. Notice was issued by this Court vide order dated 06th November 2019 in this petition. However, the same could not be served upon the Respondent due to the lockdown as per the Registry’s report.
5. Counsel for the Plaintiff, Mr. Parveen Semwal, submits that the



Defendant is currently undergoing insolvency proceedings and vide order dated 19th September, 2019 in **C.P. No. IB-710(PB)/2019** titled **Babita Gupta v. Rajesh Projects (India) Pvt. Ltd.** the National Company Law Tribunal, New Delhi Principal Branch (*hereinafter* “NCLT”) has declared moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 (*hereinafter* “IBC”) with respect to the Defendant herein, namely, Rajesh Projects (India) Pvt. Ltd. The relevant portion of the order reads as follows-

“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.”

6. The Plaintiff further submits that the Trial Court vide order dated 21st October 2021 has also adjourned the suit *sine die* in view of the moratorium



imposed by the NCLT. The said order of the Trial Court reads as under:

“Counsel for defendant submits that vide order dated 19.09.2019, moratorium has been issued qua the defendant company.

Case file perused.

Copy of judgment dated 19.09.2019 passed by the National Company Law Tribunal, New Delhi Principal Bench in C. P. No. IB-710(PB)/2019 in case titled “Babita Gupta & Ors Vs. Rajesh Projects (India) Pvt Ltd” is already on record and perused as per which moratorium has been issued against the defendant company.

At para 20 of the above-mentioned judgment prohibitions are imposed qua the defendant company which includes prohibition on the continuation of the pending suits and proceedings against the corporate debtor i.e., defendant in the present case.

As there is prohibition on the continuation on the pending suit against the defendant, therefore, present suit is adjourned sine die.

Plaintiff is at liberty to revive the suit after moving appropriate application.

File be consigned to Record Room after due compliance.”

7. Even though unconditional leave to defend may have been granted to the Defendant, considering the fact that the Defendant is undergoing insolvency proceedings before the NCLT, this Court is of the opinion that the Petitioner ought to be permitted to file its claims before the Resolution Professional (RP)/ Interim Resolution Professional (IRP). Ld. Counsel sought instructions and thereafter submitted that liberty may be granted. Accordingly, the Petitioner is permitted to file its claims against the Respondent within six weeks from today before the RP/IRP. If the said



claims are so filed, the RP/IRP shall consider the same and proceed in accordance with law.

8. The petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

JANUARY 3, 2022

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