

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-2901/ND/2019**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:**METENERE LIMITED****...APPLICANT/OPERATIONAL CREDITOR****VERSUS****K N TRADINGPVT. LTD.****...RESPONDENT/ CORPORATE DEBTOR***ORDER DELIVERED ON: 29.04.2021***CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (JUDICIAL)****MS. SUMITA PURKAYASTHA****HON'BLE MEMBER (TECHNICAL)****For the Applicant :Mr. Amit Mehta, Adv.****Ms. Shruti Munjal, Adv.****For the Respondent : Mr. Siddhant Gupta, Adv.**

MEMO OF PARTIES**METENERE LIMITED**

A-1 Ghazipur Near

Patparganj Conyainer Depot

New Delhi 110096

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

K N TRADING PVT. LTD.

E 24 Gali No. 25 MadhuVihar

New Delhi 110092

...RESPONDENT/ CORPORATE DEBTOR

ORDER

AS PER SUMITA PURKAYASTHA (MEMBER TECHNICAL)

1. The present application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by Metenere Limited (for brevity 'Applicant') (through Mr. Virender Pal Singh authorized vide board resolution dated 02.09.2019) with a prayer to initiate the Corporate

Insolvency process against K N Trading PVT. LTD(for brevity 'Corporate Debtor').

2. The Applicant Metenere Limited, claimed to be the Operational Creditor, incorporated on 04.02.1997 under the provisions of Companies Act 1996 CIN being U27107DL1997PLC084906 having its registered office at A-1 Ghazipur, Near Patparganj Container Depot Delhi 110096. It is engaged in the business of production of non-ferrous metals such as Aluminum, Lead, Copper, Zinc and Tin.
3. The Respondent K N Tradingis a company incorporated on 18.02.2016 under the Companies Act, 2013 having its registered office at Ground Floor E-24 Gali No. 25 MadhuVihar New Delhi 110092 and CIN U74900DL2016PTC291422.
4. A per the averments in the Application the Corporate Debtor approached the Applicant to supply lead and unwrought aluminum. The Applicant supplied the goods to the Corporate Debtor and raised various invoices between the period of 21.02.2017 to 31.03.2017.
5. As per the averments mentioned in the application the Corporate Debtor failed to make payment therefore, a Demand Notice under section 8 of the Code,dated27.09.2019was issued to the Corporate Debtor videemail thereby calling upon the Corporate Debtor to make payment of the unpaid debt ofRs.88,90,87,767.03/- inclusive of interest @18% per annum.

6. The Corporate Debtor issued a reply vide email dated 04.10.2019 to the Section 8 Demand notice stated that ***“the claim filed by the Applicant is not sustainable since during the given period of 21.02.2017 to 31.03.2017 there was no business that took place with the applicant. There was no existence of business/trade nor there was any privity of contract.”***
7. The Applicant has filed this Application under Section 9 on 05.11.2019 as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 88,90,87,767.03/- inclusive of interest @18% per annum. Further a notice to Section 9 application was issued to the Corporate Debtor vide order dated 13.11.2019 of the Adjudicating Authority and the reply to the Section 9 application was filed by the Corporate Debtor as on 14.02.2020.
8. The Corporate Debtor in its reply dated 14.02.2020 to the Section 9 Application stated the application filed by the Operational Creditor is liable to be dismissed on the ground that the Corporate Debtor never had any privity of contract with the Operational Creditor nor there was any supply of any goods by the Corporate Debtor against any invoice allegedly signed by the Corporate Debtor or its representatives. The Corporate Debtor submits that the Operational Creditor has placed false and fabricated invoices. The Corporate Debtor submits that the Operational Creditor has failed to produce any purchase orders, delivery challans, E-Way bills, GR No. or any communication and

details of the alleged supply of goods. The Corporate Debtor has placed its reliance on the Judgment of the Apex Court ***Mobilox Innovations Pvt Ltd Vs. Kirusa Software Pvt Ltd. (2018)1 SCC 353*** wherein it is stated that the Adjudicating Authority shall determine an application under Section 9 on the basis of

- i. *Whether there is an operational debt as defined under the act?*
- ii. *Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has nit yet been paid? And*
- iii. *Whether there is existence of a dispute between the parties or the record of pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?"*

9. The Corporate Debtor has also placed its reliance on the judgment of the Hon`ble Appellate Tribunal in ***Unigreen Global Pvt Ltd Vs. PNB &Ors [CA(AT) No. 81 of 2017]*** wherein it was held that *“the non disclosure of the relevant facts may lead to rejection of an application”*.
10. The date of default is 31.03.2017 that is the last invoice raised which was unpaid, and the present application is filed on 05.11.2019. Hence the application is not time barred and filed within the period of limitation.

11. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

12. It has been observed that time and again we have granted various opportunities to the Applicant to file a Rejoinder to prove its claim and place on record the documents which satisfy this bench with respect to existence of a valid contract or business transaction between the Applicant and the Corporate Debtor. The Adjudicating Authority vide order dated 15.01.2021 also imposed a cost on the Applicant and allowed the Applicant to file the rejoinder however, the Applicant did not comply with the order and also was not present for the next date of hearing i.e 3.02.2021. Having considered that facts and circumstances of the case we heard the Ld Counsel present for the Corporate Debtor and are of the opinion that the Applicant has failed to prove its claim and therefore, this Bench is of the view that the prayer for initiating Corporate Insolvency Resolution process against the Corporate Debtor is not sustainable. Applicant has failed to prove the Operational Debt payable and default by Corporate Debtor hence, the Application is rejected.

13. The Application is rejected and dismissed in terms of above order.

Sd/-
Sumita Purkayastha
Member (T)

Sd/-
Dr. Deepti Mukesh
Member (J)

Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon`ble Member (T) Smt. SumitaPurkayastha is not holding the court today.

Court Officer

29.04.2021