

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-1520/ND/2018

(Under Section 9 read with Rule 6 of the Insolvency and Bankruptcy Code, 2016

(Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

METENERE LIMITED

...Applicant/Operational Creditor

VERSUS

NOVELTY TREASURE METALS PRIVATE LIMITED

...Respondent/ Corporate Debtor

Judgment Pronounced on:30.07.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

IB-1520/ND/2018

Metenere Ltd vs M/s Novelty Treasure Metals Pvt Ltd

MEMO OF PARTIES

METENERE LIMITED

Registered Office at 138-139, Main Road

Gazipur, New Delhi-110096

...Applicant/Operational Creditor

VERSUS

NOVELTY TREASURE METALS PRIVATE LIMITED

Registered office at: 2727/102

1 Floor, Kucha Chalan

Behind Moti Mahal Restaurant

Daryaganj, New Delhi

...Respondent/ Corporate Debtor

For the Applicant: Mr. Amit Mehta, Adv.

For the Respondent: Mr. A.K Giri, Adv.

IB-1520/ND/2018

Metenere Ltd vs M/s Novelty Treasure Metals Pvt Ltd

ORDER

Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 by, Metenere Limited (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency Resolution Process against Novelty Treasure Metals Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a limited company incorporated under the provisions of the Companies Act, 1956 bearing CIN U27107DL1997PLC084906 and having its registered office at 138-139, Main Road, Gazipur, New Delhi-110096
3. The Corporate Debtor is a limited company, incorporated under the provisions of Companies Act, 1956 on 19.03.2015 bearing CIN U51909DL2015PTC278127 and having its registered office at 2727/102 1 Floor, Kucha Chalan Behind Moti Mahal Restaurant Daryaganj, New Delhi as per master data.
4. The Applicant submits that on request of the corporate debtor, the applicant supplied various materials from 03.10.2017 to 30.12.2017 and in pursuant to

the invoices were raised totaling to Rs 198,050,642.98/- in respect of the materials supplied to the corporate debtor.

5. The Applicant issued demand notice dated 09.08.2018 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 in Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding total amount from the Corporate Debtor of Rs 172,029,262/- (Rupees Seventeen Crore Twenty Lakh Twenty Nine Thousand Six Hundred Sixty Two Only) plus interest @18% p.a. totaling to Rs 198,050,643/-. The affidavit is filed that no reply has been received from the corporate debtor hence service of section 8 notice is complete.
6. Neither notice of dispute was raised by Corporate Debtor nor money was paid, hence the applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application through speed post and email address which has been duly delivered to the corporate debtor as per the tracking report.
7. The Corporate Debtor has filed a reply by asserting that the there is a pre existing dispute with respect to the quality of the materials supplied by the applicant and with respect to the existence of the amount of alleged debt.

Further, the corporate debtor has denied the claim of the applicant and stated that no amount is due and payable by the corporate debtor to the applicant. There are no documents annexed to support the contentions of dispute or claim not payable to the applicant.

8. The Applicant in its rejoinder controverted the averments made in the reply and has submitted that the corporate debtor has tried to create existence of dispute to save itself but nowhere the corporate debtor had brought to the knowledge any email/correspondence relating to dispute exchanged between the parties. Further, the corporate debtor has been silent on the specific claim made by the applicant.
9. Heard the learned counsels for both the sides and perused the documents on record, it is beyond doubt that the default has occurred with respect to the payment of the operational debt due to the Applicant. The corporate debtor has not placed on record any document which exhibits the plausible dispute with respect to the quality of the materials supplied by the applicant nor with respect to the existence of the amount of alleged debt. Moreover, the notice under section 8 of code has not been disputed by the corporate debtor. It is only when application under section 9 is filed, the corporate debtor has come forward with lame defence and without any evidence. It can be thus inferred

that there is no merit in the so-called dispute raised by the corporate debtor in reply to the application. Therefore, it goes beyond doubt that the Applicant is entitled to claim its dues.

10. The date of default is occurred from 01.09.2018 and application is filed on 01.11.2018 hence the debt is not time barred and the application is filed within the period of limitation.

11. The Applicant has filed an affidavit under section 9(3)(b) affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.

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

13. The present application is complete and the applicant has established the default in payment of the operational debt, hence is entitled to claim. The present application is admitted.

14. Since the Applicant has not named the Insolvency Resolution Professional, Mr. Jayprakash Bansilal Somani, with registration number IBBI/IPA-003/IP-N00262/2019-20/12976 (email –jaysomani64@gmail.com, is appointed by this Hon'ble Tribunal as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP

nab med who may act as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

15. We direct the operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Jayprakash Bansilal Somani to meet out the expense 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 for the date of receipt of this order by the operational Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the operational Creditor.

16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate debtor prohibiting proviso (a) to (d)

of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in vogue.

17. A copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (T)

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)