

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-3058/(ND)/2019

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

In the matter of:

M/s. Metenere Ltd.

Registered Office at: 138-139, Main Road, Gazipur,
New Delhi- 110096

...Applicant/Operational Creditor

Versus

M/s. Empower Softrade and Techno Pvt. Ltd.

Registered Office at:
WZ-48, First Floor,
Village Budhella, Vikas Puri,
New Delhi – 110018

...Respondent/Corporate Debtor



Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI.RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant: BMC Advisors, Advocates

ORDER

Per SH.RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date:15.03.2022

1. This is an application filed by the Applicant M/s. Metenere Ltd. seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s. Empower Softrade and Techno Pvt. Ltd. for the alleged default on the part of the Respondent in clearing the debt of Rs. 16,37,50,522(Rupees Sixteen Crore Thirty Seven Lakhs Fifty Thousand Five Hundred and Twenty Two rupees only), including 18% interest annually till 20.03.2019, as alleged by the Applicant. The details of



transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:

- i. That the Corporate Debtor approached the Operational Creditor for purchasing goods from the Operational Creditor. The Operational Creditor agreed to supply goods / unwrought aluminum to the Corporate Debtor from time to time as demanded by the Corporate Debtor.
- ii. That as per requirements of the Corporate Debtor, the Operational Creditor started supplying goods/unwrought aluminum to the Corporate Debtor. The Operational Creditor continued to supply material to the Corporate Debtor up to June 2017. Pursuant to the supplies made by the Operational Creditor to the Corporate Debtor, the Operational Creditor raised various invoices from time to time and maintained a running ledger account of the Corporate Debtor.
- iii. That the Operational Creditor requested the Corporate Debtor for making payment towards the aforesaid invoices. Initially, the Corporate Debtor made regular payments to the Operational Creditor.



However, with passage of time, the Corporate Debtor stopped making payment to the Operational Creditor. After July 2017, the Corporate Debtor did not make any payment to the Operational Creditor.

- iv. That due to the failure of Corporate Debtor in making payment to the Operational Creditor, huge outstanding principal amount of more than Rs. 12 crores accumulated as outstanding dues.
- v. That the Corporate Debtor never raised any complaint against the goods / unwrought aluminum supplied by the Operational Creditor nor against the invoices raised by the Operational Creditor.
- vi. That as a result of the aforesaid *mala fide* acts of the Corporate Debtor, the Operational Creditor felt cheated and issued a Demand Notice under clause (a) of sub-rule (1) of Rule 5 of the Insolvency and Bankruptcy Code, 2016 on 20.03.2019 to Corporate Debtor. The said demand notice was duly delivered to Corporate Debtor on 22.03.2019 but the Operational Creditor did



not receive any reply from the Corporate Debtor to the said demand notice.

vii. That the said behavior of the Corporate Debtor is extremely unethical and wrongful. The Corporate Debtor has grossly defaulted in making payment of the outstanding dues of the Operational Creditor and therefore, the Applicant has filed the present application under section 9 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process of the Respondent.

2. Despite several notices to the Corporate Debtor, no one was present on behalf of the Corporate Debtor on any of the dates of the hearing and hence the Corporate Debtor was set ex-parte vide order dated 16.03.2021.
3. In compliance of Section 9 (3)(b) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has filed affidavit dated 22.01.2020 stating that no notice of any pre-existing dispute has been received by the Applicant from the Corporate Debtor relating to the dispute of the un-paid Operational Debt. The Operational Creditor has also stated in



the said affidavit that there is no pending arbitration or court proceeding before any court or tribunal relating to the dispute of the un-paid Operational Debt.

4. We have gone through the documents filed by the Operational Creditor and heard the arguments made by the counsel of the Operational Creditor. The applicant has claimed the default on part of the Respondent for amount of Rs. 16,37,50,522(Rupees Sixteen Crore Thirty Seven Lakhs Fifty Thousand Five Hundred and Twenty Two rupees only), including 18% interest annually till 20.03.2019.
5. Vide daily order dated 16.03.2021, it has been noted that the Corporate Debtor has been set ex-parte.
6. Vide daily order dated 06.10.2021, it has been noted that the Operational Creditor is subjected to CIRP.
7. Vide daily order dated 23.02.2022, it has been noted that the Learned counsel for the Resolution Professional of the Operational Creditor submitted that the Resolution Professional of the Operational Creditor has not authorized him to act as Resolution Professional in this matter. Therefore, filing of fresh Form 2 does not arise. The counsel for the Resolution



Professional also submitted that the Resolution Professional can be appointed from the IBBI's panel in this matter.

8. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor and upon appreciation of the documents placed on record to substantiate the claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and along with that, in the absence of any preexistence of dispute, this tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect.
9. This Adjudicating Authority, hereby appoints Mr. Pawan Kumar Goyal, (Email – ca.pawangoyal@gmail.com), Reg. No: IBBI/IPA-001/IP-P00875/2017-2018/11473 to act as Insolvency Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.



- 10.** The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.
- 11.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
- 12.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 Securitization 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 hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit,



registration, quota, concession, clearances or a similar grant or right during the moratorium period.

14. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

15. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its 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 day-to-day 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 would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- 16.** The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor'

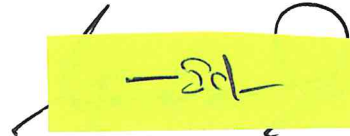


and specific mention regarding admission of this petition must be notified to the public at large.


-Sd-

(SH. RAHUL BHATNAGAR)

MEMBER (TECHNICAL)


-Sd-

(SH. P.S.N. PRASAD)

MEMBER (JUDICIAL)