THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. IV
AT NEW DELHI

IA No. 2490/2021
IN
Company Petition No. (IB)-1520(ND)/2018

Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the corporate debtor

IN THE MATTER OF:
BRAHM DATT VERMA

...APPLICANT/RESOLUTION PROFESSIONAL

AND IN THE MATTER OF:

METENERE LIMITED

...OPERATIONAL CREDITOR

VERSUS

NOVELTY TREASURE METALS PRIVATE LIMITED

....CORPORATE DEBTOR

Order delivered on: ***21.09.2021***

Coram:

DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)
SMT. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)

For Resolution Professional: Mr.Brahm Datt Verma

MEMO OF PARTIES

AND IN THE MATTER OF:

BRAHM DATT VERMA

RESOLUTION PROFESSIONAL OF
NOVELTY TREASURE METALS PRIVATE LIMITED

...APPLICANT

ORDER

AS PER SUMITA PURKAYASTHA (TECHNICAL)

1. This is an application filed by the Resolution Professional under Section 33 (1) of Insolvency and Bankruptcy Code, 2016 (**hereinafter referred as the "Code")** for order of liquidation of the corporate debtor, Novelty Treasure Metal Private Limited.

2. The facts in brief are that the an application for Corporate Insolvency Resolution Process was preferred by Metenere Limited, herein the Operational Creditor in the matter of Novelty Treasure Metal Private Limited , herein the Corporate Debtor, under Section 9 of the IBC on account of default. The Adjudicating Authority vide order dated 20.08.2020 admitted the said application and appointed Mr. Brahm Datt Verma as the Interim Resolution Professional of the Corporate Debtor. Thereafter the Application was filed against the Operational Creditor to initiate CIRP and an order of initiating CIRP was passed by

the Adjudicating Authority on 20.08.2020 hence, thereafter the RP of the Operational Creditor was representing the Operational Creditor.

3. That an application (IA No. 736 of 2021) was filed under Section 60(5) of the IBC, 2016 for seeking directions of this Adjudicating Authority regarding doubtful assignment of the debt by the Operational Creditor (sole member of the COC).The said application was disposed of with the following observations:

"Order dated 16.04.2021

We have our doubts that whether such assignee of debt has informed to IRP/RP company M/s Terrence Alloys Pvt. Ltd. It seems that there are some internal transactions between the parties without any legal implication. Learned RP states that the CIRP cost is also not fully paid and the CoC member is not attending any meeting. Notice of this application was issued on 18th February 2021. None has appeared nor any reply is filed. The RP may take the decision as per law and take appropriate steps. We dispose of this application but we feel the need to put the penalty on the applicant Metenere Ltd as well as assignee of debt. Let, cost of Rs. 10,000/- each be paid by the Metenere Ltd. as well as assignee of debt M/s Terrence Alloys Pvt. Ltd. to the RP and the cost of Rs. 10,000/- each be paid in the Prime Minister Relief Fund by the Metenere Ltd. as well as assignee of debt M/s Terrence Alloys Pvt. Ltd. failing which RP may report and appropriate stricture will be passed. Application is disposed of in terms of above order."

4. It is submitted that keeping in mind the order dated 16.04.2021, the assignment was rejected and the 2nd meeting of the CoC was rescheduled for 18.05.2021 and the notice was issued to the RP of the Operational Creditor Metenere Limited and the ex-directors of the Corporate Debtor vide email on 12.05.2021. The RP of the Operational Creditor vide email dated 18.05.2021 refused to attend the CoC meeting stating :

" I am in receipt of your invitation for attending the second meeting of the committee of creditors of Novelty Treasure Metals Private Limited ("Novelty") scheduled on May 18, 2021 at 3.00 pm.

At the outset, please note that pursuant to an application filed before the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi ("NCLT") by State Bank of India against Metenere Limited, the NCLT vide its order dated September 25, 2020, which was delivered on October 03, 2020 ("Admission Order"), had admitted the application for the initiation of the corporate insolvency resolution process (CIRP) of Metenere Limited. However, in the Admission Order, the name of the interim resolution professional (IRP) was incorrectly recorded and upon bringing this error to the notice of the Hon'ble NCLT, the said typographical error was corrected and I was appointed as the IRP vide the order of NCLT, dated October 15, 2020. The CIRP of Metenere Limited was stayed pursuant the interim orders dated October 07, 2020 and November 05, 2020, passed by the Hon'ble Supreme Court of India. The CIRP of Metenere Limited thereafter resumed pursuant to

the order dated December 15, 2020, passed by the Hon'ble Supreme Court of India. Subsequently, I was appointed as the resolution professional of Metenere Limited in the meeting of the CoC dated 12 Jan 2021.

In relation to the matter pertaining to the outstanding dues payable by Novelty to Metenere Limited ("Outstanding Due"), after having preliminary discussions with the officials of Metenere Limited, I have been given to understand that the Outstanding Due has already been assigned in favour of M/s Terrence Alloys Private Limited.

Given that this matter pertains to a period prior to my appointment, I am currently ascertaining the facts of this matter and until such time I would be unable to take any action pertaining to the Outstanding Due including attending the meeting(s) of the committee of creditors of Novelty, where a creditor is expected to exercise its rights on the basis of its outstanding dues.

5. As a result of the refusal by the RP of the Operational Creditor, the re-scheduled 2nd meeting of the CoC could not be held on 18.05.2021. Further in the reply to the email dated 18.05.2021, an email was received on 18.05.2021 from one Mr. Harshit Garg (from the email address of the RP of the Operational Creditor that:

"On behalf of the Metenere RP, we would like to record that it has been clarified with your good self over calls/ meeting and trail email, that the Assignment Agreement executed by Metenere and Terrence, forbids Metenere to play any role in the ongoing CIRP of Novelty as of today. "

6. The Applicant replied to the abovementioned email and stated that:

"Let me share the following information

1. As the assignment of debt has been rejected on the directions of the NCLT, Metenere continues to be the sole member of COC and as such RP of Metenere Ltd is duty bound to attend the meetings of COC. No discretion is available in this regard.

2. Metenere would continue to be as the applicant under "In the Matter of" till the pendency of the case. The application has been disposed off and there is not going to be any further hearing in the IA under reference."

7. It is submitted by the Applicant that in view of the above correspondences the 2nd meeting of the CoC could not be held even after expiry of 291 days from the initiation of the CIRP on 20.08.2020, due to non-cooperation by the RP of the Operational Creditor no extension of CIRP period could be obtained. That despite of bailable warrants being issued the ex- directors. They have not cooperated in the CIRP. Hence, this application has been filed as per the provisions of section 33 of IBC, 2016.

8. The Resolution Professional represents that as per the provisional Balance sheet of 20.08.2020 (annexed) provided by the ex-directors, the position of the Corporate Debtor is as under:-

   a. There are loans and advances extended amounting to Rs 1,43,42,285/-

   b. Cash and Cash equivalent of Rs. 1,99,422/-

c. There are no Trade receivables

d. There are no fixed assets

e. There are trade payables of Rs. 1,51,71,545/-

9. In order to deal with the issue at hand, We would like to refer Section 33(1) of the Code;

> "33. (1) Where the Adjudicating Authority, —
>
> a. before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or
> b. rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—
>
> (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
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> (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
>
> (iii) require such order to be sent to the authority with which the corporate debtor is registered."

10. It is understood that the Adjudicating Authority has to be satisfied that the either before the expiration of the CIRP period i.e. 330 days, no resolution plan was received by theCoC and

hence, an application for liquidation of the Corporate Debtor has been preferred on approval of the CoC or in case the Adjudicating Authority rejects the resolution plan for the non-compliance of the requirements under Section 31, the order for liquidation can be passed.

11. In the present case no approval of the CoC has been obtained with respect to filing of this application, rather it has been observed that neither the sole CoC member i.e the Operational Creditor nor the RP of the Operational Creditor has come forward or appeared before the Adjudicating Authority to move forward with the CIR process of the Corporate Debtor. Further it has been observed that no progress has been made in the CIRP of the Corporate Debtor and neither the Operational Creditor nor the RP of the Operational Creditor is pressing for the CIRP. Even the alleged assignee of the debt of the Operational Creditor, *M/s Terrence Alloys Pvt.Ltd* has not come forward after the rejection of the application for assignment of debt. It is further observed that the Resolution professional has annexed only the provisional Balance sheet of 20.08.2020 of the Corporate Debtor, no audited accounts are available to consider in order to initiate the liquidation process of the Corporate Debtor Company.

10 This Adjudicating Authority in the circumstances taking into facts, this bench thinks fit that no orders under Section 33(1) of the code

can be passed because none of the criteria for passing the order under Section 33(1) are satisfied hence, this application stands Rejected. We dispose of this application with the directions to terminate the CIRP forthwith and We, think it is appropriate to put the penalty on the Operational Creditor, the RP of the Corporate Debtor as well as the alleged assignee of debt M/s Terence Alloys Pvt. Let the cost of Rs.30,000/- each be paid in the Prime Minister Relief Fund and compliance affidavit with proof of payment be filed within 2 weeks from this order.

11 Copy of this order be sent to the parties.

12 IA. 2490(ND)/2021 is rejected and stands disposed of on the aforesaid terms, thereby IB 1520/ND/2018 also stands closed and disposed off.

SD/-

SUMITA PURKAYASTHA

MEMBER (T)

SD/-

DR. DEEPTI MUKESH

MEMBER (J)