



**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 610/Chd/Hry/2019**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of:**

**Metenere Limited**

Having its Registered Office at:  
138-139, Main Road, Gazipur  
New Delhi-110096  
CIN: U27107DL1997PLC084906  
PAN: AAACM8484F

...Petitioner-Operational Creditor

Vs.

**GKEM International Private Limited**

having its registered office at  
Plot No.63, Sector 5, IMT Manesar,  
Gurgaon, Haryana-122050  
CIN: U51900HR2012PTC046479

...Respondent-Corporate Debtor

**Judgement delivered on: 06. 03.2023**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Mr. Viren Sharma with  
Ms. Khushboo Garg

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide order  
dated 10.11.2022.



**Per: Harnam Singh Thakur, Member (Judicial)**

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Metenere Limited, (for brevity 'Operational Creditor' / 'Petitioner')**, through its CFO Mr. Virender Pal Singh with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **GKEM International Private Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor, namely, **GKEM International Private Limited**, is a Company incorporated on 12.07.2012 under the provisions of the Companies Act, 1956 with CIN No. U51900HR2012PTC046479 with its registered office at Plot No.63, Sector 5, IMT Manesar, Gurgaon, Haryana-122050. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure-8.

3. The facts of the case, briefly, as stated in the petition are that the Corporate Debtor is engaged in the business of Trading. The Operational Creditor raised invoices upon various buyers including Corporate Debtor in ordinary course of business, towards the supply of goods. Some of the invoices were paid, however, the Corporate Debtor failed to clear other invoices bearing nos:-5031-5034, 5099-5102, 5157-5160, 5179-5182, 5238-5241, 5300-5303, 5358-5361, 5419-5422, 5474-5477, 5529-5532, 5553-5556, 5610-5613, 5666-5669, 5726-5729, 5782-5785, 5846-5849, 5908-5911, 5930-5933, 5951-5954, 6012-6015, 6064-6067, 6100-6103, 6141-6144, 6175-6178, 6204-6207, 6243-6246, 6282-6285, 6323-6326,



6367-6370, 6411-6414, 6453, 6454, 6483, 6484, 6514, 6515, 6547,6548, 6566, 6567, 6593, 6594 for a total sum of Rs.55,81,99,465.53/- (Fifty Five Crores Eighty One Lakh Ninety Nine Thousand Four Hundred Sixty Five and Fifty Three Paisa Only) in which Rs.25,84,014.77/- (Twenty Five Lakhs Eighty Four Thousand Fourteen and Seventy Seven Paisa Only) was adjusted, the outstanding balance is of Rs.55,66,15,450.76/- (Fifty Five Crores Sixty Six Lakhs Fifteen Thousand Four Hundred Fifty and Seventy Six Paisa Only). Since 24.02.2017, the corporate debtor failed to clear the outstanding amount despite various reminders by the operational creditor.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.55,66,25,451/- (Rupees Fifty Five Crore Sixty Six Lakhs Twenty Five Thousand Four Hundred Fifty One). The default occurred on 24.02.2017 i.e. when the last payment was received from the corporate debtor. Copy of Invoices (Annexure 2), Statement of Ledger Accounts of Corporate Debtor (Annexure 3), Statement of Bank Accounts bearing Nos. 0499639000000384 with Laxmi Vilas Bank and 5611818556 with Kotak Mahindra Bank where deposits are made or credits are received normally by the Operational Creditor in respect of the debt of the Corporate Debtor (Annexure 7) are attached with the main petition.

5. A demand notice dated 31.05.2019 is stated to be issued by the operational creditor and the same has been delivered to the corporate debtor as the postal receipt and tracking report are annexed as Annexure 5 & 6 of the petition. The corporate debtor had not replied to the demand notice till date and no notice of dispute for the claim has been received by



the Operational Creditor (i.e. the Applicant) within a period of 10 days of the receipt of the demand notice by the Corporate Debtor.

6. Notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide diary No.00609/2 dated 09.11.2022. None appeared on behalf of the corporate debtor nor any reply was filed. So, the respondent-corporate debtor proceeded against *ex parte* vide order dated 10.11.2022 of this Adjudicating Authority. The short written submissions were filed by applicant vide Diary No.00609/3 dated 12.12.2022 and was re-filed on 14.12.2022.

7. We have heard the learned counsel for the petitioner and have perused the records.

8. The first issue for consideration is whether the demand notice dated 31.05.2019 was properly served. The demand notice was served upon the respondent-corporate debtor as the postal receipt and tracking report are annexed at Annexure-5 and 6 of the petition. However, the corporate debtor had not replied to the demand notice till date. Therefore, the demand notice was duly served.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit by the operational creditor that the corporate debtor after the expiry of the period of ten days from the date of delivery of the said demand notice and invoice demanding the payment under Section (9)(1) the Operational Creditor has neither received any payment from the Corporate Debtor nor received any notice of dispute under Sub-Section 8(2) relating to the operational debt of



Rs.55,66,15,451(Rupees Fifty Five Crore Sixty Six Lakhs Twenty Five Thousand Four Hundred Fifty One only). Therefore, it can be safely concluded that there is no pre-existing disputes between the parties.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 31.05.2019 was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e. 24.02.2017 i.e. when last payment was received from the Corporate Debtor. This application was filed on 15.10.2019 vide Diary No. 5602. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs.55,66,25,451/- (Rupees Fifty Five Crore Sixty Six Lakhs Twenty Five Thousand Four Hundred Fifty One) is still pending which amounts to default, when corporate debtor avoided the payment of outstanding amount despite repeated reminders by petitioner-operational creditor. Copy of Invoices (Annexure 2), Statement of Ledger Accounts of Corporate Debtor (Annexure 3), Statement of Bank Accounts bearing Nos. 0499639000000384 with Laxmi Vilas Bank and 5611818556 with Kotak Mahindra Bank where deposits are made or credits are received normally by the Operational Creditor in respect of the debt of the Corporate Debtor (Annexure 7) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than the threshold limit of one crore.



12. It is noted that the corporate debtor has not paid back the aforesaid amount due despite statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above-mentioned facts that the liability of the corporate debtor is undisputed.

13. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **GKEM International Private Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below :-

14. In Part-III of Form No. 5, Mr. Brahm Dutt, Interim Resolution Professional (IRP) was proposed by the petitioner. However, vide IA No.357 of 2023, Mr. Gaurav Gupta is proposed as new IRP. The form-2 dated 26.12.2022, Form-B in which AFA Certification valid till 1.12.2023 along with certification of registration issued by the Insolvency and Bankruptcy Board of India is submitted. The Law Research Associate of this Tribunal has checked the credentials of Mr. Gaurav Gupta and there is nothing adverse against him. In view of the above, we appoint Mr. Gaurav Gupta, Registration No. IBBI/IPA-001/IP-P00556/2017-18/10986, E-mail: [gauravinduca@gmail.com](mailto:gauravinduca@gmail.com), Mobile No.9814918377 the Interim Resolution Professional with the following directions:-



i.) The term of appointment of Mr. Gaurav Gupta shall be in accordance with the provisions of Section 16(5) of the Code;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency



Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate



Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government



Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

15. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

16. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

17. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

18. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed



by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

19. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

20. This petition is accordingly admitted.

SD/-

(Subrata Kumar Dash)  
Member (Technical)

SD/-

(Harnam Singh Thakur)  
Member (Judicial)

March , 2023  
DS /TB