

**IN THE NATIONAL COMPANY LAW TRIBUNAL****NEW DELHI (COURT NO. IV)****Company Petition No. IB-741/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****FOUR COINS GLOBAL INDIA PRIVATE LIMITED****...Respondent/ Corporate Debtor****Judgment Pronounced on: .09.2019****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****SH. HEMANT KUMAR SARANGI****HON'BLE MEMBER (Technical)***IB-741/ND/2019**Metenere Limited Vs Four Coins Global India Private Limited*

**MEMO OF PARTIES**

**METENERE LIMITED**

**Registered office at A-1, Ghazipur**

Near Patparganj Container Depot,

New Delhi-110096

**...Applicant/Operational Creditor**

**VERSUS**

**FOUR COINS GLOBAL INDIA PRIVATE LIMITED**

**Registered office at H. No. 320, Plot No. H7**

Landmark Near Behind PP Design State, Aggarwal Plaza

Pitampura, New Delhi-110034

**...Respondent/ Corporate Debtor**

**For the Applicant:** Ms. Shruti Munjal, Adv. Mr. Amit Mehta, Adv.

**For the Respondent: ---**



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## ORDER

**Per-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 (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Metenere Limited (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Four Coins Global India Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a leading company engaged in non-ferrous metal production especially Aluminum, Lead, Copper, Zinc & Tin and minorly silver & gold and is one of the biggest producers of lead and only producer of pure Tin in India and has created a niche for itself in the market over the years. Mr. Virender Pal Singh had been authorized vide board resolution dated 03.01.2019 to initiate Corporate Insolvency process under I & B Code. The applicant is having its registered office at A-1, Ghazipur, Near Patparganj Container Depot, New Delhi-110096.
3. The Corporate Debtor is a private limited company, company limited by shares, incorporated under the provisions of Companies Act, 1956

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on 30.06.2015 bearing CIN U52390DL2015PTC282194 and having Authorized Share Capital of the Corporate Debtor is Rs.1,00,00,000/- and Paid Up Share Capital is Rs. 1,00,00,000/- as per Master Data of the company. The registered office of the corporate debtor is situated at H. No. 320, Plot No. H7 Landmark Near Behind PP Design State, Aggarwal Plaza, Pitampura, New Delhi-110034.

4. The Applicant has stated that the corporate debtor has approached the applicant to supply aluminium and unwrought aluminium and based on the orders/requirements of the corporate debtor, the applicant supplied the requisite amount of the goods ordered by the corporate debtor. The applicant had raised invoices dated 20.06.2017 & 29.06.2017 upon the corporate debtor.
5. The Applicant has submitted that payment terms as per the invoices were clearing of payment towards the invoices within 90 days from the date of invoices. Despite various reminders and requests to the corporate debtor to clear the outstanding dues, the corporate debtor had failed in its obligations to clear the outstanding dues.
6. The Applicant had issued notices dated 09.08.2018 and 06.10.2018 to the corporate debtor demanding the outstanding amount of Rs 3,46,70,727.90/- along with @18% interest p.a. which is due and

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payable since 20.09.2017. The corporate debtor chose not to reply to the aforesaid notices of the applicant.

7. Thereafter, the Applicant issued demand notice dated 18.12.2018 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 as per Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor. The notice was returned by India Post, with a remark “LEFT” from the registered address of the corporate debtor. Considering that the notice was sent at the registered address of the company as reflected in the MCA website and the remark ‘left’ shall not be considered as not served to defeat the very purpose of service because the same can be manipulated by the corporate debtor, as observed by the Hon’ble Apex Court in case of “*Madan And Co. V. Wazir Jaivir Chand*” 1989 SCC 264. The extracts from the said order is reproduced herein:

*“We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to (i) of section 11(1) and the proviso to section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and*

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*unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under s. 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee.*

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*"He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time,*

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*all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."*

Hence in the present case, the service of the demand notice was complete.

8. The Applicant as an abundant precaution had again issued the demand notice dated 09.01.2019 upon the registered address of the corporate debtor as well as on the registered email address of the corporate debtor as reflected in the master data and also on the residential address of the directors. The said notice was sent by Speed Post which was duly delivered on 16.01.2019. The Corporate Debtor has neither raised any dispute through its reply to the aforesaid notice till date nor made any payment towards the outstanding dues.

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9. The Applicant filed present Application on 19.03.2019 under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per the affidavit of service filed by the applicant.
10. As on date, the Corporate Debtor is liable to pay a sum of Rs.4,23,34,840.89/- (Rupees Four Crore Twenty-Three Lac Thirty-Four Thousand Eight Hundred Forty and Eighty-Nine Paise). As per Form 5 under 'Part IV' the breakup of debt which fell due in terms of principal amount is given.

S. No.	Particulars of Operational Debt	
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date form which such debt fell due.	Rs.4,23,34,840.89/- (Rupees Four Crore Twenty-Three Lac Thirty-Four Thousand Eight Hundred Forty and Eighty-Nine Paise) i.e Rs. 3,46,70,727.90/- (Rupees Three Crore Forty-Six Lacs Seventy Thousand Seven Hundred Twenty-Seven and Ninety Paise) being the principal amount along with the interest thereon at the rate of 18 % per annum i.e. Rs. 76,64,112.99/- (Rupees Three Crore Forty-Six Lacs Seventy Thousand Seven

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		Hundred Twenty-Seven and Eighty-Two Paise).								
		<table border="1"> <thead> <tr> <th>Invoice date</th> <th>Interest @ 18% p.a.</th> </tr> </thead> <tbody> <tr> <td>20.09.2017</td> <td>Rs. 31,26,111.01/-</td> </tr> <tr> <td>29.06.2017</td> <td>Rs. 45,38,001.98/-</td> </tr> <tr> <td><b>Total</b></td> <td>Rs 76,64,112.99/-</td> </tr> </tbody> </table>	Invoice date	Interest @ 18% p.a.	20.09.2017	Rs. 31,26,111.01/-	29.06.2017	Rs. 45,38,001.98/-	<b>Total</b>	Rs 76,64,112.99/-
Invoice date	Interest @ 18% p.a.									
20.09.2017	Rs. 31,26,111.01/-									
29.06.2017	Rs. 45,38,001.98/-									
<b>Total</b>	Rs 76,64,112.99/-									
2.	Amount claimed to be in default and the date on which the default occurred	<p>Total amount of Rs 4,23,34,840.89/- (Rupees Four Crore Twenty-Three Lac Thirty-Four Thousand Eight Hundred Forty and Eighty-Nine Paise) is due till date form the date of invoice inclusive of interest.</p> <table border="1"> <tbody> <tr> <td>Outstanding</td> <td>Rs 3,46,70,727.90/-</td> </tr> <tr> <td>Interest</td> <td>Rs 76,64,112.99/-</td> </tr> <tr> <td><b>Total</b></td> <td>Rs. 4,23,34,840.89/-</td> </tr> </tbody> </table>	Outstanding	Rs 3,46,70,727.90/-	Interest	Rs 76,64,112.99/-	<b>Total</b>	Rs. 4,23,34,840.89/-		
Outstanding	Rs 3,46,70,727.90/-									
Interest	Rs 76,64,112.99/-									
<b>Total</b>	Rs. 4,23,34,840.89/-									

11. The Applicant has filed its bank statement of State Bank of India from the period 01.06.2017 to 19.02.2019 stating that the amount claimed or

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any part thereof, has not been received by the applicant nor had any person, on its behalf had received in any manner the amount due to them as required u/s. 9(3)(c) of I & B Code. The Applicant has filed an affidavit under section 9(3)(b) dated 18.03.2019 affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.

12. The Applicant further states that in spite of several opportunities given none appeared on behalf of the corporate debtor nor any reply is filed and the matter was heard exparte.
13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The default occurred from 29.06.2017, hence the debt is not time barred and the application is filed within the period of limitation.
15. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. In the light of above facts and records, the present application is admitted, in terms of section 9 (5) of IBC, 2016.

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16. The Applicant has named the Insolvency Resolution Professional, to be appointed by the order of Tribunal, as Mr. Brahm Datt Verma, with registration number IBBI/IPA-003/IP-N00056/2017-18/10496 (email – bdverma.rp@gmail.com) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the corporate debtor and the applicant herein 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.
17. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Brahm Datt Verma 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 one week from the date of receipt of this order by the Financial Creditor. The amount

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however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.

18. 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 as per 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 force.
19. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. 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)



*[Handwritten signature]*  
03/10/2019

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (J)

*[Handwritten signature]* 03/10/19  
Deputy Registrar  
National Company Law Tribunal  
CGO Complex, New Delhi-110003

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