

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III  
IB-374(ND)/2020**

Order 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:**

**M/s. METENERE LIMITED**

*Having its registered office at:*

A-1, Ghazipur, Near Patparganj,

Container Depot, Delhi-110096.

CIN: U27107DL1997PLC084906

*Through its Authorised Signatory*

Mr. Virender Pal Singh

**..... Operational Creditor**

**VERSUS**

**M/s. NAVDHATU WIRES PRIVATE LIMITED**

*Having its registered office at:*

A-2/121, Janakpuri, New Delhi-110058.

CIN: U31500DL2011PTC228098

**..... Corporate Debtor**

**Order Delivered On: 19.02.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Kunal Godhwani, Adv.

For the Respondent : Mr. Dhruv Gandhi, Mr. Deepam Rangwani, Adv.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. This Application has been filed by M/s. Metenere Limited, the Applicant/Operational Creditor before this Adjudicating Authority under

**IB-374(ND)/2020**

**Date of Order: 19.02.2024**

Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), against M/s. Navdhatu Wires Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding principal amount of Rs. 101,70,46,484.67/- and Rs. 43,36,80,177.72/- as interest @18% p.a., totalling to Rs. 145,07,26,662.39/-.

**2. Submissions of the Applicant/Operational Creditor:**

- i.** It is the case of the Operational Creditor that the Corporate Debtor approached the Operational Creditor to supply Unwrought Aluminium. The Operational Creditor agreed to supply the goods to the Corporate Debtor and raised various invoices on 07.03.2017 and 10.06.2017.
- ii.** It is submitted by the Operational Creditor that no quality claims/disputes were raised by the Corporate Debtor after receipt of the goods nor any quality claims/disputes have been received by the Operational Creditor till date. The Corporate Debtor failed to comply with the payment terms, i.e. clearing of payment towards the invoices from the date of invoice.
- iii.** The Operational Creditor issued a Demand Notice dated 10.08.2019 under Section 8 of the Insolvency & Bankruptcy Code, 2016, however, in the said notice there were certain arithmetical errors. Therefore, the Operational Creditor again issued the Demand Notice dated 19.09.2019 to the Corporate Debtor on the Email Address as available on the Master Data of the Corporate Debtor with the Ministry of Corporate Affairs website. Consequently, the Corporate Debtor did not reply to the said Demand Notice.

**3. Submissions of the Respondent/Corporate Debtor:**

- i.** The Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant and stated that the Applicant is guilty of

suppressio veri (suppression of true fact) and suggestio falsi (suggestion of false fact).

- ii.** The Corporate Debtor submitted that the notice under Section 8 of the Insolvency and Bankruptcy Act, 2016 sent by the Operational Creditor is not maintainable. It is submitted that the demand notice under Section 8 of the Bankruptcy Code was issued on 19.09.2019 as alleged by the Operational Creditor. The Corporate Debtor denies the receipt of the said notice and no proof of service has been placed on record by the Operational Creditor, to establish the service of the notice dated 19.09.2019. The demand notice dated 19.09.2019 has been issued in Form-3, despite the invoices. It is submitted that the issuance of the notice in Form-3 is in violation of the provisions of the IBC and is bad in law because if the nature of Operational Debt involves the issuance of invoices, then the demand notice has to be mandatorily issued in Form-4.
- iii.** It is further submitted that the Operational Creditor supplied certain goods to the Corporate Debtor between the period 07.03.2017 to 10.06.2017. Immediately upon receipt of the goods, the Corporate Debtor raised issues with respect to the quality and differences in the rate of the goods. The Corporate Debtor further informed the Operational Creditor that on account of the inferior quality of goods, the Corporate Debtor suffered a loss of more than Rs.100 crores, which it is entitled to claim and recover from the Operational Creditor along with interest. One meeting was held between the Operational Creditor and Corporate Debtor on 20.08.2018, of which the minutes were drawn. A copy of the Minutes of the Meeting dated 20.08.2018 has been placed on record.
- iv.** The Corporate Debtor contended that the demand notices dated 22.06.2018 and 09.08.20218 issued by the Operational Creditor and mentioned in the Minutes of Meeting dated 20.08.2018 are neither produced as a document nor mentioned in the present application. A copy of the notice dated 22.06.2018 and a copy of the notice dated 09.08.2018 has been placed on record.

#### 4. **Analysis and Findings:**

- i. We have heard the Ld. Counsel appearing for both parties and also perused the records.
- ii. We find that the Operational Creditor issued multiple demand notices (dated 22.06.2018, dated 09.08.2018, dated 10.08.2019 and dated 19.09.2019) under Section 8 of the Code to the Corporate Debtor which is not acceptable. The IBC, 2016 is a procedural Code and the process stipulated therein needs to be followed in the letter and spirit. There is no such provision in the IBC, 2016 and in the Regulation made thereunder that allows the Operational Creditor to issue multiple demand notices to the Corporate Debtor. Hence, we are of the view that the multiple demand notices are beyond the ambit of the IBC, 2016.
- iii. The only issue to be examined in this Application is whether there exists a plausible pre-existing dispute between the parties or not.
- iv. The Respondent has raised a Preliminary Objection as to the maintainability of the present application filed under Section 9 of the Code based on the existence of a prior dispute.
- v. Admittedly, In the Minutes of the Meeting dated 20.08.2018, it was agreed between the parties that they would make all efforts to resolve the dispute through mediation and the unused goods/materials lying with the Corporate Debtor shall be assessed by an independent valuer in respect to their sale value. It was further agreed that the issue of payment shall be considered only after the quality issue and other claims of the Corporate Debtor are rectified/settled.
- vi. The Case of the Corporate Debtor is based on the Minutes of the Meeting dated 20.08.2018, which is extracted below for ready reference:  
Minutes of the Meeting dated 20.08.2018

*“Mr. Rajesh Gupta of Navdhatu Wires Pvt. Ltd. stated that immediately on receiving of the goods, it had been conveyed to Metenere Ltd that the quality of the goods was not as per the specification assured by Metenere Ltd in the month of march 2017 and therefore he called upon Metenere to take back the goods. Mr. Rajesh Gupta also stated that the rate of the goods charged in the*

*invoices is in variance with the rate quoted on the London Metal Exchange and therefore Invoices are inflated and incorrect. Mr. Rajesh Gupta states that on account of the inferior quality of goods, Navdhatu Wires Pvt. Ltd. could not fulfil its market commitments and suffered a loss of more than Rs. 100 Crores, which it is entitled to claim and recover from Metenere Ltd. along with Interest. Mr. Rajesh Gupta also claimed a refund of the payments made by Navdhatu Wires Pvt. Ltd. to Metenere Ltd, along with interest. Mr. Gupta stated that rather than Navdhatu Wires Pvt. Ltd. owing any money to Metenere Ltd, it is in fact Navdhatu Wires Pvt. Ltd. which has to recover money from Metenere Ltd and is entitled to an amount of more than Rs. 200 Crores. Mr. Rajesh Gupta also states that the demand notice dated 22.06.2018 and 09.08.2018 were not received by Navdhatu Wires Pvt. Ltd. Mr. Virender Pal Singh has stated that the goods were supplied and invoices were raised and all the materials supplied was of best quality and there are no maintainable quality claims. However, Mr. Rajesh Gupta refused to entertain any such contentions of Mr. Virender Pal Singh.”*

- vii.** The Minutes of the Meeting dated 20.08.2018, clearly establishes the fact that the Corporate Debtor raised a pre-existing dispute before the issuance of multiple demand notices under Section 8 of the Code. It can be demonstrated that the parties were constantly in discussions over pre-existing and unresolved disputes.
- viii.** It is noted that under the scheme of the Insolvency and Bankruptcy Code, 2016, any objection with regard to the pre-existing dispute has to be raised by the Corporate Debtor at the first instance, at the time of giving a reply to the Demand Notice under Section 8. However, in this case, the Operational Creditor has served the Demand Notice vide email dated 19.09.2019 to md@gridcables.com, which has not been bounced back. However, the Operational Creditor failed to serve the demand notice to the Corporate Debtor through speed post. The Corporate Debtor has chosen not to give any reply to the Demand Notice under Section 8 sent vide email dated 19.09.2019 to md@gridcables.com and

raised any pre-existing dispute. However, the Corporate Debtor in its reply, filed before this Adjudicating Authority to the Application filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016, has raised the pre-existing disputes by producing the Minutes of the Meeting dated 20.08.2018 which have been discussed in the preceding paragraphs. Therefore, it cannot be said that the Corporate Debtor has lost the right to raise pre-existing disputes at a later stage.

- ix.** Hence, we are satisfied that the Corporate Debtor had raised a pre-existing dispute with respect to the amount claimed by the Operational Creditor.
- x.** It is well-settled law that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument, it would suffice for the Adjudicating Authority to reject the application filed under Section 9 of the Code, the Adjudicating Authority being precluded from determining as to whether the Corporate Debtor would be successful or not, with regard to the said dispute, at the time of decision making.

5. In view of the above analysis and findings, we are satisfied that the present Applicant fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly ordered as follows:

- i.** The Application bearing **IB-374(ND)/2020** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**