



NATIONAL COMPANY LAW TRIBUNAL
INDORE SPECIAL BENCH
COURT NO. 1

ITEM No.202
CP(IB)/10(MP)2024

Order under Section 9 IBC, 2016

IN THE MATTER OF:

M/s Cosmo World

V/s

M/s Supereco Automotive Co. LLP

.....Applicant

.....Respondent

Order delivered on 12/06/2025

Coram:

Shammi Khan, Hon'ble Member(J)

Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER

(Hybrid Mode)

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-
SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

Neeraj

Sd/-
SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
SPECIAL INDORE BENCH AT INDORE**

CP (IB) No.10/9/MP/2024

(An application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of **Supereco Automotive Co. LLP.**

M/s. Cosmo World

Partnership Firm having
its principal place of Business at,
Sahara India Sadan, 2A,
Shakespeare Sarani, Kolkata 700 071

Also at: JP House, First Floor,
Left Wing, Saidulajab,
Lane No. 2, Westend Marg,
Near Saket Metro Station,
New Delhi 110030

Also at: Sahara India Bhawan 1,
Kapurthala Complex Aliganj,
Lucknow, Uttar Pradesh

...Applicant/Operational Creditor

VERSUS

Supereco Automotive Co. LLP

Plot No. 11, Sector A,
Industrial Area Maharajpur,
Gwalior, Madhya Pradesh -474005

...Respondent/Corporate Debtor

Order pronounced on 12.06.2025



C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV KUMAR SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicant/OC : Mr. Mustafa Alam, Advocate

For the Respondent/CD: Mr. Rohit Dubey, Advocate

O R D E R

(Per: BENCH)

1. This is an application filed on 04.03.2024 by **M/s Cosmo World** (hereinafter referred to as “the Applicant/Operational Creditor”) against **Supereco Automotive Co. LLP & Ors** (hereinafter referred to as “the Respondent/Corporate Debtor”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of its outstanding dues **Rs. 1,09,11,600/-**.



2. On Perusal of of Part-I of the Form-5 reveals that the Applicant/Operational Creditor **M/s Cosmo World** is a Partnership Firm. The registered office of the Operational Creditor is situated at JP House, First Floor, Left Wing, Saidulajab, Lane No. 2, Westend Marg, Near Saket Metro Station, New Delhi-110030. Further, the application is filed by Mr. Lankipalli Nageswara Rao- Co-Chief Operating Officer, who has been authorized by a General Power of Attorney dated 17.10.2023 annexed at page-191. The General Power of Attorney dated 17.10.2023 complies with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, authorizing Mr. Lankipalli Nageswara Rao to file this application on behalf of the Operational Creditor.

3. On Perusal of Part-II of the Form-5 reveals that the Respondent/Corporate Debtor is **Supereco Automotive Co. LLP** (LLPIN: AAB-7562) is a Limited Liability Partnership Firm. The date of incorporation is 10.09.2013. The registered office of the Respondent/Corporate Debtor is



situated at Plot No. 1, Sector A, Industrial Area, Maharajpura, Gwalior-474005.

4. On Perusal of Part-III of the Form-5 reveals that the Applicant/Operational Creditor has not nominated the name of the Interim Resolution Professional (“**IRP**”) and the same is to be appointed by this Adjudicating Authority.
5. On perusal of Part-IV of the Form-5 reveals the total amount in default as claimed by the Operational Creditor is Rs.1,09,11,600/-. The default arose from the non-delivery of vehicles by April 2022, as per the agreement, while 22.03.2023 is the date of the Demand Notice.
6. The Operational Creditor has placed the facts though this Petition in the following manner:-

6.1. It is stated that the Operational Creditor is a multi-brand aggregator and trader of Electric Vehicles (EV) and also trades in Co-branded electric vehicles under the name of ‘Sahara Evols’. Whereas, the corporate debtor has expertise in the area of product development, and business plan formulation relating to design and development, manufacturing, and



engineering of electric automobiles and allied businesses.

- 6.2. It is stated that the operational creditor and the corporate debtor entered into an agreement dated 16.01.2021, wherein the Operational Creditor engaged the Corporate Debtor as its Exclusive Original Equipment Manufacturer (OEM) to manufacture electrically and mechanically driven two & three-wheeler vehicles.
- 6.3. It is further stated that the operational creditor paid purchase advances to the Corporate Debtor for the supply of electric vehicles, against which the corporate debtor raised invoices from time to time. However, the corporate debtor failed to supply the vehicles, and the last date of the vehicle delivery by the corporate debtor was April 2022.
- 6.4. Therefore, the Operational Creditor issued a Demand Notice in Form 3 on 22.03.2023 calling upon the Corporate Debtor to pay the outstanding debt. The said Demand Notice was duly served upon the Corporate Debtor. A copy of the Demand Notice dated 22.03.2023, along with the delivery report, is annexed as Annexure A 4.



6.5. Further, despite the receipt of the Demand Notice, the Corporate Debtor has neither replied to the Demand Notice nor paid the outstanding amount of debt.

7. The Operational Creditor has relied upon the following documents:-

1. *Copy of Agreement dated 16.01.2021 **Annexure A/1;***
2. *Copy of all invoices raised by Operational Creditor **Annexure A/2;***
3. *Copy of Ledger Accounts maintained by the Operational Creditor **Annexure A/3 (Colly);***
4. *Copy of Statutory Demand Notice dated 22.03.2023 along with receipt and postal tracking **Annexure A/4 (Colly);***
5. *Bank Statement of the Operational Creditor with Punjab National Bank, Mahanagar, Lucknow Bank Account No.0758002100141490 **Annexure A/5.***

8. That on issuance of the notice in the Petition, the Corporate Debtor has appeared and filed its reply on 04.02.2025, denying various averments made in the Petition, which are as under:-.

8.1. The Applicant is an unregistered partnership firm under the Indian Partnership Act, 1932 engaged in the business of multi-brand aggregator and trader of Electric Vehicles (EV). The respondent is engaged in the business of product development and business plan formulation relating to design and development,



manufacturing, and engineering of electric automobiles and allied businesses.

- 8.2. The Applicant and respondent entered into an “Exclusive Original Equipment Manufacturing Agreement” on 16.01.2021. Wherein the parties have agreed that the respondent will manufacture electric Vehicles on behalf of the Applicant for the duration of the aforesaid agreement.
- 8.3. The amount claimed as debt by the applicant has become due during the period under section 10A of the Code. That during the COVID-19 pandemic, the initiation of CIRP under sections 7, 9, 10 was suspended forever in respect of any default arising on or after 25.03.2020 for a period of one year i.e, 24.03.2021.
- 8.4. The Corporate Debtor inter-alia contended that the present Petition U/s 9 of IBC, 2016 is not maintainable as the alleged debt claimed by the Operational Creditor does not fall within the purview of '**operational debt**'. Moreover, the Operational Creditor does not fall within the definition of '**Operational Creditor**' and the alleged claim which is sought to be made cannot be considered as an operational debt within the provision of the Code



- 8.5. The said amount being solely in the nature of an advance paid by the Applicant in the nature of a loan for procurement of goods from the Respondent is a transaction reverse nature as provided for under the definition of “operational debt” under the Code. The operational debt is the claim that arises out of the provision of goods; however, in the instant case, there are no goods supplied by the applicant to the respondent. The amount due is an advance in the nature of a loan paid by the Operational Creditor to the Corporate Debtor, which is pending refund.
- 8.6. The applicant has tried to club the financial debt with operational debt, which is non-maintainable. The applicant claimed to have supplied goods amounting to Rs.5,45,49,651/- and paid an advance amount (loan) of Rs.8,47,23,499/-; out of which it has received back goods amounting to Rs.12,99,57,344/- and therefore, the outstanding operational debt amounted to Rs.1,09,11,600/-.
- 8.7. Further, as per the ledger of the applicant in the books of the respondent, the debt amount is Rs.13,86,431/-, which is much below the threshold limit of Rs.1.00 crore. Therefore, the present petition is not maintainable and liable to be dismissed.



9. Rejoinder was filed by the Operational Creditor on 03.03.2025, wherein it is stated that-

9.1. The date of default is April, 2022, when the corporate debtor failed to deliver the vehicles as per the agreement dated 16.01.2021 and the date of demand notice i.e. 22.03.2023.

9.2. The applicant has registered its debt on the NeSL portal on 16.02.2024, however, the respondent did not file their objection and the final report of the NeSL reflects the status of default as 'Deemed to be authenticated'.

9.3. Further, the debt does not fall under section 10A of the Code. Section 10A bars the defaults arising on or after March 25, 2020, for a period of one year; however, the date of default is April 2022, during which the Corporate Debtor failed to supply the vehicles. The Agreement dated 16.01.2021 was executed between the applicant and the respondent, subsequent to which the corporate debtor has raised invoices against the services they were to provide on different dates against the advance payment made by the applicant.

9.4. The corporate debtor was the "Exclusive manufacturer" of the operational creditor as per the agreement dated 16.01.2021, and thus, as per the terms of the Agreement, the Operational creditor was



making payments in advance for the smooth functioning of manufacturing of the vehicles against the invoices raised by the Corporate Debtor. The Operational Creditor paid an advance of Rs. 14,08,75,111/- against the proforma invoices, out of which a sum of Rs. 1,09,11,600/- remains in default owing to the non-supply of the electric vehicle to the Operational Creditor. Hence, the default amount against the non-supply of electric vehicles qualifies as operational debt and not financial debt.

- 10.** We have heard the arguments of Ld. Counsel for the Applicant/Operational Creditor as well as Ld. Counsel for the Respondent/Corporate Debtor and perused the material available on record, including Annexures A/1 to A/5. The primary question is whether the petition satisfies the requirements under Section 9 of the IBC, 2016, for initiating CIRP. This involves examining the nature of the debt, compliance with procedural requirements, applicability of Section 10A, and the threshold limit.
- 11.** On the nature of the debt, Section 5(21) of the IBC defines operational debt as a claim in respect of the provision of goods or services, including debts arising under any law. The agreement dated 16.01.2021 (Annexure A/1) establishes



that the Respondent was to manufacture and supply electric vehicles to the Applicant as an exclusive OEM. The Applicant made advance payments, as evidenced by bank statements (Annexure A/5), against proforma invoices (Annexure A/2) raised by the Respondent.

- 12.** The Respondent's failure to deliver vehicles by April 2022, as admitted in the Applicant's rejoinder, constitutes a breach of the agreement, resulting in a debt arising from the non-provision of goods. The Respondent's contention that the advance payments are a loan is unsupported, as no loan agreement or terms indicating a financial transaction are annexed. Additionally, the transactions of advance made by the creditor, invoices raised by the corporate debtor, and the advance remained unadjusted leading to the amount remained payable by the corporate debtor are all interlinked and the claim made by the creditor is in respect of provision of goods and therefore fits into the definition of operational debt as given in section 5 (21) of the IBC, 2016. The ledger accounts (Annexure A/3) and NeSL report further corroborate the Applicant's claim of Rs. 1,09,11,600 as an operational debt.



- 13.** On the threshold limit, Section 4 of the IBC, as amended, requires a minimum default of Rs. 1.00 crore for CIRP initiation. The Applicant claims Rs. 1,09,11,600, supported by invoices (Annexure A/2), ledger accounts (Annexure A/3), bank statements (Annexure A/5), and the NeSL report. The Respondent's claim of a lower debt of Rs. 13,86,431/- is based on their ledger but lacks supporting documents to contradict the Applicant's evidence. The NeSL report, registered on 16.02.2024 and indicating 'deemed authenticated' status due to the Respondent's failure to object, serves as conclusive evidence of default under Section 215 of the IBC, further strengthening the Applicant's claim. Therefore, the debt meets the Rs. 1.00 crore threshold.
- 14.** The Respondent's argument that the Applicant, as an unregistered partnership firm, cannot be an Operational Creditor is untenable. Section 5(20) of the IBC defines an Operational Creditor as a person to whom an operational debt is owed. The agreement (Annexure A/1) and invoices (Annexure A/2) establish a contractual relationship for the supply of goods, qualifying the Applicant as an Operational



Creditor. The unregistered status of the partnership firm does not preclude it from filing under Section 9, as no such requirement exists in the IBC or the Indian Partnership Act, 1932.

- 15.** On procedural compliance, Section 8 of the IBC requires a Demand Notice in Form 3 to be served on the Corporate Debtor, followed by a 10-day period for response or payment. The Applicant issued the Demand Notice on 22.03.2023 (Annexure A/4), duly served, as evidenced by the delivery and postal tracking reports. The Respondent's failure to reply or pay within the stipulated period satisfies the conditions under Section 8. The application in Form-5, filed on 04.03.2024, complies with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, and is accompanied by all necessary documents (Annexures A/1 to A/5). Furthermore, no evidence of a pre-existing dispute prior to the issuance of the Demand Notice on 22.03.2023 has been placed on record by the Corporate Debtor, as required under Section 8(2)(a) of the IBC



- 16.** The Respondent's contention that the debt is a mix of financial and operational debt is unsupported. The Applicant's claim of Rs. 1,09,11,600 pertains solely to non-delivery of vehicles against advance payments, as detailed in the ledger (Annexure A/3) and bank statements (Annexure A/5). The Respondent's reference to goods worth Rs. 12,99,57,344 supplied against advances of Rs. 14,08,75,111 does not negate the outstanding amount, which is specifically tied to non-delivered vehicles. The nature of the transaction aligns with operational debt under Section 5(21).
- 17.** Given the above findings, the petition satisfies the requirements under Section 9 of the IBC. The debt of Rs. 1,09,11,600 is an operational debt, the default occurred in April, 2022, when the corporate debtor failed to deliver the vehicles as per the agreement dated 16.01.2021 and the date of the demand notice, i.e. 22.03.2023, which is outside the Section 10A period, and the threshold limit is met. The Applicant has complied with procedural requirements, and the Respondent's objections lack merit. The absence of a nominated IRP in Part-III of Form-5 requires this



Adjudicating Authority to appoint an IRP under Section 16 of the IBC.

18. Therefore, the Petition filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted

19. Accordingly, in light of the above facts and circumstances, it is hereby ordered as under:-

(i) The Respondent/Corporate Debtor **Supereco Automotive Co. LLP** is **admitted** in the Corporate Insolvency Resolution Process under section 9(5) of the Code.

(ii) As a consequence thereof, a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- 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 Securitisation 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.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the Corporate Debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) Since the Operational Creditor has not proposed the name of IRP, we appoint **Apeksha Kekre** having Registration No. IBBI/IPA-002/IP-N01279/ 2023-



2024/14358, Mobile No.9993108726, E-mail ID: apekshakekre@gmail.com under Section 13 (1)(c) of the Code to act as Interim Resolution Professional **(IRP)**. She shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all her functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its promoters, or any other person associated with the management of the Corporate Debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the Corporate Debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.



- (viii) The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor company' and manage the operations of the Corporate Debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.3,00,000/- (Rupees Three Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, Corporate Debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after



completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Petition and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

20. Accordingly, this Petition being **CP(IB)/10/9/MPAHM/2024** is admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

Sd/-
SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)
Swati

Sd/-
SHAMMI KHAN
MEMBER (JUDICIAL)