



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) NO.45/ALD/2024**

*(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016  
read with Rule 6 of the Insolvency and Bankruptcy Rules, 2016.)*

**IN THE MATTER OF:**

**M/S APCO MOTORS**

Through its Proprietor,  
Ms. Naseem Arif,

**Having its Registered Address at:**

Bulandshahar Road,  
Hapur, Uttar Pradesh, 245101

**.....Applicant/Operational Creditor**

*Versus*

**M/S PSR METALS PRIVATE LIMITED**

CIN: U27310UP2010PTC041205

**Having Its Address At:**

7<sup>th</sup> Floor Tower-1, Unit No.-1701  
Express Trade Tower-2, B-36 Sector-132,  
Gautam Buddha Nagar, Noida,  
Uttar Pradesh, India, 201301

**.....Respondent/Corporate Debtor**

**Order Pronounced On: 26.05.2025**

***Coram:***

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)



***Appearances:***

Ms. Babita Jain, Adv. : For the Operational Creditor

Sh. Vipin Kr. Kushwaha, Adv. : For the Corporate Debtor

**ORDER**

1. The present Application was filed on 01.06.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “the Code/IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as “the Rules”) by M/s APCO Motors, through its proprietor Ms. Naseem Arif (hereinafter referred as "Applicant/Operational Creditor") to initiate the Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against M/s PSR Metals Private Limited (hereinafter referred as "Corporate Debtor") due to its failure to pay the total outstanding amount of Rs. 1,06,68,674/- to the Operational Creditor. The date of default, as stated in the application, is 31.03.2024.
2. The Operational Creditor, engaged in the business of sale of lead ingots and related material, on the request of the Corporate Debtor, supplied lead ingots/spares from time to time during the F.Y. 2021-22 and 2022-23 up to 04.10.2023.



3. Pursuant to the supply of the said materials, the Operational Creditor raised four bills against the Corporate Debtor for fulfilling its payment obligations. Consequently, the Corporate Debtor made a part payment on 21.10.2023, however, no payments were made thereafter.
4. The operational creditor submits that, despite making repeated requests, issuing reminders, conducting personal visits, and undertaking rigorous follow-ups with the Corporate Debtor regarding the payment of outstanding dues, the Corporate Debtor failed to honour its financial obligations.
5. In view of continuing default, the Operational Creditor issued a demand notice in Form 3 under Section 8 of the Code dated 01.05.2024, demanding payment of the outstanding amounts of Rs. 1,06,68,674/- within 10 days from the receipt of notice. However, neither any payment nor any response was received from the Corporate Debtor.
6. Aggrieved by persistent delay and continued failure of the Corporate Debtor to clear the outstanding dues, indicating its inability or lack of solvency to discharge its debt, the Operational Creditor filed the



present Application seeking for initiation of CIRP against the Corporate Debtor.

**REPLY ON BEHALF OF THE CORPORATE DEBTOR**

7. The Respondent/Corporate Debtor filed its reply, vide Diary No. 2590 dated 16.12.2024, admitting the supplies of materials as well as the bills raised by the Operational Creditor. Corporate Debtor states that, despite its best efforts, it was unable to arrange the requisite funds and, accordingly, admitted its liability to the sum of Rs. 1,06,68,674/- towards the Operational Creditor.
8. The Corporate Debtor further submits that it is presently undergoing a financial crisis due to the business having been affected on account of the COVID-19 pandemic, and accordingly, requests two years' time for repayment of the outstanding amount.
9. No rejoinder has been filed by the Applicant against the above reply as the liability of the debt has been admitted by the Corporate Debtor and the matter was argued orally before us by the Ld. Counsel for the Applicant Operational Creditor insisted for the payment of debt immediately or else the Application to be admitted as the debt and default has been established as per the admission made in the reply filed by the Corporate Debtor and there is no provision in the IBC to



provide any time to the Corporate Debtor for payment of outstanding liability after its default has been established as per the provision of the section 9. The Ld. Counsel for the Corporate Debtor has only pleaded for 2 years' time to be given for clearing the debt, and nothing has been opposed on merit in respect of the debt and default.

### **FINDINGS AND ORDER**

**10.** We have heard the arguments of the Learned Counsels appearing for both parties. Further, on perusal of the records, exhibits/annexures, and after considering the argument advanced by respective Learned Counsels, we find that the following issues are for consideration to be decided for admissibility or otherwise of this Application u/s 9 of the Code.

- a. **Whether there is a Debt and Default**
- b. **Whether there is a Pre-Existing Dispute**

**a. Debt and Default.**

**11.** As per the present Application filed by the Operational Creditor in Form 5, seeking initiation of CIRP against the Corporate Debtor is based on the outstanding dues mentioned in Part-IV of the Application amounting to Rs.1,06,68,674/-, with the date of default as mentioned therein being 31.03.2024. The facts leading to the



above debt and default are that the Applicant/Operational Creditor had supplied lead ingots to the Corporate Debtor, upon its request from time to time. Subsequently, the Operational creditor raised the following bills/invoices for its payment:

S. No.	Date of Invoices	Invoice No.
1	26.06.2023	AM/23-24/038
2	19.07.2023	AM/23-24/042
3	01.09.2023	AM/23-24/063
4	04.10.2023	AM/23-24/085

12. However, despite repeated requests made by the Operational Creditor, the Corporate Debtor failed to clear the outstanding dues after having made a part payment on 21.10.2023 of Rs. 24,79,210/-.
13. Thereafter, the Operational Creditor issued a demand notice dated 01.05.2024 under section 8 of the Code demanding payment of the outstanding amount of Rs. 1,06,68,674/- within 10 days of the receipt of the notice. However, neither any payment was made by the Corporate Debtor nor any notice of dispute was given, leading to the filing of the present application by the Operational Creditor on 01.06.2024, which falls within the prescribed limitation period as the date of default is 31.03.2024.



14. Based upon the above facts and circumstances, we are of the view that even after the part payment of the invoices issued by the Applicant, the Corporate Debtor has defaulted in a debt exceeding Rs.1 crore with all the unpaid invoices taken together.
15. Further, it is also observed in the Corporate Debtor's reply dated 09.12.2024, that it has admitted its liability and acknowledged that despite its best efforts, it was unable to arrange the requisite funds towards the outstanding payment of the Operational Creditor. The relevant excerpt of the reply dated 09.12.2024 is reproduced below:

*"4. That it is further submitted that the corporate debtor has been trying its best to arrange the necessary funds in order to pay and clear the bills raised by the operational creditor as the corporate debtor has been running into losses for the past few months and could not arrange the funds.*

*5. That the corporate debtor is admitting its liability with respect to the bills raised by the applicant, and Corporate Debtor has been in default for the sum of Rs.1,06,68,674/- (Rupees one crore six lakhs sixty-eight thousand six hundred seventy-four only) as per Running account."*

16. Considering the above facts and circumstances of the case, we are of the view that the acknowledgement made by the Corporate Debtor



through its reply dated 09.12.2024, unequivocally establishes the existence of a legally enforceable debt. The Corporate Debtor's failure to make payments towards the invoices raised by the Operational Creditor confirms the occurrence of default. It is also observed that the admission by the Corporate Debtor, wherein it cited financial distress as the reason for non-payment, reinforces the fact that the outstanding dues remain unpaid, not due to any dispute regarding the liability, but solely due to the inability of the Corporate Debtor to fulfil its payment obligations. Thus, it is evident that a valid debt has been incurred and remains unpaid, leading to a default on the part of the Corporate Debtor.

17. As per section 4 of the Code, the minimum threshold for initiating a CIRP application is Rs.1 Crore. In the present case, the Applicant has placed sufficient documents to show that a debt of more than Rs.1 crore, as also mentioned in Part IV of the Application, is due and that there has been a default in payment on the part of the Corporate Debtor and the amount of this liability has also been admitted by the Corporate Debtor in its reply. Therefore, we are satisfied that there is a debt of more than Rs.1 Crore and also a default has occurred on part of the Respondent Corporate Debtor to pay this debt.





**b. Whether there is a Pre-Existing Dispute**

18. As regards there being any pre-existing dispute in respect of the claim made by the Operational Creditor as discussed above, we find that, as per the affidavit filed under Section 9(3)(b) of the Code by the applicant, no notice of dispute was raised by the Corporate Debtor against the demand notice dated 01.05.2024. Additionally, the reply dated 09.12.2024 confirms the Corporate Debtor's admission of default as against the payment of dues by the Operational Creditor, as has already been discussed in detail in para 15 of this order. Therefore, no pre-existing dispute has been found in existence in the present case.
19. After finding that in the present case, there is debt more than the threshold limit of Rs.1 crore, there is a default in repayment of the said debt and also, there is no pre-existing dispute with respect to this debt, further, all other conditions for admission of application under Section 9(5) (i) of the I & B Code 2016 against the Corporate Debtor, have also been found to be fulfilled, we find this application as being fit for admission under Section 9(5)(i) of the I & B Code, 2016 for starting CIRP against the Corporate Debtor.



20. The Operational Creditor, in Part III of the Application, has proposed the name of Mr. Pramod Kumar Sharma as Interim Resolution Professional. His Registration Number is IBBI/IPA-002/IP-N00110/2017-2018/10258, R/o H. No-16, Dasharath Kunj-B West Arjun Nagar, Agra, Uttar Pradesh-282001, Email: pksharmafcs@gmail.com. He has duly given his consent in Form No. 2 dated 19.05.2024, annexed as **Annexure-9** with the Application. The Law Research Associate of this Tribunal, Ms. Kriti Kaushal, has checked the credentials of Mr. Pramod Kumar Sharma and found that Disciplinary Committee of IBBI vide order dated 20.09.2024 suspended the registration of Mr. Pramod Kumar Sharma for a period of three years. However, it is to be noted that the Hon'ble High Court of Allahabad in Writ-C No. 33195 of 2024 titled as "Pramod Kumar Sharma versus IBBI & 02 Ors." has issued stay against the impugned order dated September 20, 2024 till the next date of listing and this stay is still continuing. On checking the IBBI website, the AFA of Mr Pramod Sharma is still found valid till 30.06.2025 and the disciplinary proceeding against him is stayed by the Hon'ble High Court. Therefore, we appoint Mr. Pramod Kumar Sharma as IRP in this case.



21. Accordingly, this application is admitted u/s 9 of the Code, 2016 under the following terms and conditions.

- i. The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e., **M/s PSR Metals Private Limited** is hereby admitted.
- ii. We hereby declare a moratorium and order for public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii. This Adjudicating Authority hereby appoints Mr. Pramod Kumar Sharma to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 20 above.
- iv. The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -



- 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 Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- vi. Apart from above prohibitions in respect of the corporate debtor, it is further directed that the supply of essential goods or services to the corporate debtor, as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- vii. 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 financial sector



regulator and to a surety in a contract of guarantee to a corporate debtor.

- viii. 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 the corporate debtor under Section 33 as the case may be.
- ix. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.
- x. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor and to constitute a Committee of Creditors ( hereinafter referred as “**COC**”) and shall file a report certifying the constitution of the COC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the COC within seven days of filing the report of the constitution of the COC.
- xi. The COC in its first meeting shall appoint a Resolution Professional (hereinafter referred as “**RP**”) as per the provision of section 22(2) and file an application before this Tribunal for confirmation of the appointment of the RP.



- xii.** The Suspended Board of Directors of the corporate debtor is directed to give to IRP/RP 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 IRP/RP 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.
- xiii.** 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.
- xiv.** The IRP/RP is directed to take custody and control of all the records of information relating to assets of the Corporate Debtor, its Books of Account in physical form or the computer systems storing the electronic records at the earliest in accordance with the provision of Regulation 3A of IBBI



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “CIRP Regulations, 2016”).

- xv. The Operational Creditor shall also provide necessary assistance to IRP/RP in obtaining the necessary information about the Corporate Debtor as envisaged in Regulation 4(3) of the CIRP Regulations, 2016.
- xvi. In case of any non-cooperation by the Suspended Board of Directors or the Statutory Auditors, IRP/RP 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 the retrieval of relevant information from the systems of the corporate debtor.
- xvii. The IRP/RP may take the assistance of Digital Forensic Experts empaneled with this Bench/IBBI/MCA for this purpose.
- xviii. 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.
- xix. The IRP/RP 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.



- xx.** The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities'/institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings.
  - xxi.** The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIR Proceedings as per law.
  - xxii.** The IRP/RP shall collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the Corporate Debtor.
  - xxiii.** The IRP/RP is further directed to send regular progress reports to this Tribunal every month.
  - xxiv.** We direct the Operational Creditor to deposit a sum of Rs.1,00,000/- with the Interim Resolution Professional, to meet out the expenses 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.
- 22.** A certified copy of the order shall be communicated to both the Applicant Operational Creditor and the Respondent Corporate





Debtor. The learned counsel for the Applicant Operational Creditor shall deliver a certified copy of this order to the IRP forthwith. The Registry is also directed to send a certified copy of this order to the IRP at his e-mail address forthwith.

- 23.** List the CP(IB) 45/ALD/2024 on 01.07.2025 for filing of the Progress Report/further proceedings.

*-Sd-*

**(ASHISH VERMA)**  
**Member (Technical)**

*-Sd-*

**(PRAVEEN GUPTA)**  
**Member (Judicial)**

**Date: 26.05.2025**