THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)

CP (IB) No.534/Chd/Hry/2019

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

<u>In the matter of:</u>

Mr. PURSHOTTAM LAL GUPTA
PROPRIETOR
M/s METAL TRADING CO.
OFFICE SITUATED AT:
B-271, NEHRU GROUND,
NIT FARIDABAD,
HARYANA-121001 …Applicant/Operational Creditor

Vs.

M/s DENEB AUTOMOTIVES PRIVATE LIMITED
REGISTERED OFFICE
BUILDING NO.-724, SECTOR-37,
PART-II, GURGAON,
HARYANA-122001
CIN: U29253HR2013PTC050270
…Respondent/Corporate Debtor

Judgment delivered on: 22.09 .2022

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

For the Applicant-Operational Creditor : Mr. G.S. Sarin, Practising Company Secretary for petitioner

For the respondent-Corporate Debtor : Respondent ex-parte vide Order dated 13.12.2021.

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 M/s Metal Trading Co. (for brevity **'Operational Creditor'/ 'Applicant'**), represented by its Authorised Representative, Mr. Purshottam Lal Gupta, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/s Deneb Automotives Private Limited (for brevity **'Corporate Debtor'/ 'Respondent'**).

2. The Corporate Debtor namely, M/s Deneb Automotives Private Limited, is a Company incorporated on 06.09.2013 under the provisions of Companies Act, 1956 with CIN No.U29253HR2013PTC050270 with its registered office at Building No.724, Sector-37, Part-II, Gurgaon, Haryana-122001. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor, Income Tax PAN of proprietor of Operational Creditor & GST Certificate is attached with the main petition and marked as Annexure-L.

3. The facts of the case, briefly, as stated in the petition are that the Corporate Debtor is engaged in the business of manufacturing & supply of household accessories. The Operational Creditor supplied goods CR Steel strips to Corporate Debtor from March, 2018 and issued various invoices. Copies of detail of Outstanding Invoices & Computation of Interest, invoices,

Statement of Accounts (ledger) of Corporate Debtor are attached with the petition as Annexure-G, H & I respectively.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.39,35,057/- (Thirty Nine Lakhs Thirty Five Thousand Fifty Seven) (including interest of Rs. 3,33,608/-) and the date on which default occurred is 14.04.2018.

5. A demand notice in Form 3 dated 30.07.2019 is stated to be issued to the Corporate Debtor at its Registered office as well as work address through speed post and the same has been duly served. The copy of the registered postal receipts and copy of notice are appended with this application as Annexure K. However, no reply to the demand notice has been stated to be filed.

6. Notice of this petition was issued to the corporate debtor vide order dated 14.11.2019 to show cause as to why this petition be not admitted. None appeared on behalf of the corporate-debtor. Compliance affidavit in terms of order dated 01.11.2021 has been filed vide Diary No.277/01 dated 06.12.2021, wherein respondent has been served through email. It was observed that vide order dated 02.03.2020, cost of Rs.10,000/- was imposed and despite service, no reply has been filed by learned counsel for respondent. Even thereafter, none appeared on behalf of the respondent. Keeping in view the facts that neither the cost was paid nor the respondent has put in appearance despite service through email. Therefore, respondent-corporate debtor has been set ex-parte. The short written submissions are also filed by Operational Creditor vide Diary No.00277/2 dated 18.07.2022.

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 in Form 3 dated 30.07.2019 was properly served. The petitioner has placed a copy of the registered postal receipts and copy of demand notice which was delivered to the corporate debtor.Therefore, demand notice was duly served (attached as Annexure-K of the petition).

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that none appeared on behalf of the corporate debtor despite repeated service and has been set ex parte vide order dated 13.12.2021. Moreover, the petitioner has appended compliance affidavit u/s 9(3)(b) stating that there is no reply given by the corporate debtor relating to a dispute of the unpaid operational debt. Even corporate debtor have received the notices but have not replied to the same (attached as Annexure-F of the main petition). It is stated that there is no pre-existing dispute between the parties.

10. The other issue for consideration is whether this application is filed within limitation. This application was filed on 24.09.2019 vide Diary No.5078. Whereas the date of default is 14.04.2018, therefore, this Adjudicating Authority finds that this application has been 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.39,35,057/- (including Rs.3,33,608/- interest). The operational creditor has supplied goods CR

Steel Strips to Corporate Debtor from March, 2018 and issued various invoices which are attached as Annexure G of the petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

12. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default which is above the threshold limit.

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, M/s Deneb Automotives Private Limited and also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect and appoint Interim Resolution Professional as below:

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; and

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.

14. 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 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.

15. 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.

16. In Part-III of Form No. 5, Mr. Sunil Kumar Aggarwal, Interim Resolution Professional has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Sunil Kumar Aggarwal and there is nothing adverse against him. In view of the above, we appoint Mr. Sunil Kumar Aggarwal, Registration No.IBBI/IPA-002/IP-N00081/2017-18/10222,E-mail:aggarwalsk21@yahoo.com, Mobile No.9811347648 as the Interim Resolution Professional with the following directions: -

i.) The term of appointment of Mr. Sunil Kumar Aggarwal 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.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to IRP after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the Resolution Process in a time-bound manner. 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 and move an application seeking appropriate remedy, if required.

vii.) 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

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

17. The petitioner is directed to deposit an amount of Rs.60,000/- (Rupees Sixty Thousand 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.

18. This petition is accordingly allowed and admitted.

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 copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-	Sd/-
(Subrata Kumar Dash)	**(Harnam Singh Thakur)**
Member (Technical)	**Member (Judicial)**

September, 22, 2022

SD/TB