NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-316(ND)2020

IN THE MATTER OF:

M/s. Neo Industries
Through its Partner,
Mr. Karan Singh
Registered Office at :
Plot No. 5, Street No. 3,
Indira Complex, Kheri Road,
Sector-87, Neharpar, Faridabad,
Haryana- 121002

...Applicant/Operational Creditor

VERSUS

M/s. Nikko Auto Limited
Registered Office at :
806, Devika Tower 6,
Nehru Place, New Delhi- 110019

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on: 24.05.2022

CORAM:

SHRI ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)
SHRI L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Dhruv Gupta

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under Section 9 of the 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 M/s. Neo Industries through its Partner, Mr. Karan Singh (for brevity **'Applicant/Operational Creditor'**), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Nikko Auto Limited (for brevity **'Respondent/Corporate Debtor'**).

2. That the Corporate Debtor namely, M/s. Nikko Auto Limited is a Company incorporated on 12.03.1983 with CIN U74899DL1983 PLC093808 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at. 806, Devika Tower 6, Nehru Place, New Delhi- 110019, which falls under the jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 6,00,00,000/- and Paid-up Share Capital is Rs.1,83,18,240/- as per the Master Data of the Corporate Debtor annexed.

4. It is averred by the Applicant that Corporate Debtor has placed orders for nuts of various dimensions which the Operational Creditor has supplied on day to day basis against the invoices to the Corporate Debtor.

5. That the particulars of the Operational Debt and the date of default as mentioned by the Applicant in the Part IV of the application are reproduced below :

PART IV

PARTICULARS OF OPERATIONAL DEBT

1.	Total amount of debt, details of transactions on account of which debt fell due and the date from which such debt fell due	**Total Amount of Debt :** Rs. 14,73,624/- (Rupees Fourteen Lacs Seventy Three Thousand Six Hundred and Twenty Four only) including the due & payable outstanding Operational Debt of Rs. 10,44,718/- (Rupees Ten Lacs Forty Four Thousand Seven Hundred and Eighteen Only) along with an Interest amount of Rs. 4,28,906/- (Rupees Four Lacs Twenty Eight

		Thousand Nine Hundred and Six Only) calculated @ 18% p.a. from the due date till the realization of the amount, as clearly mentioned in each of the pending Invoices, till 18.10.2019 and thereon. **Details of Transactions of account of which debt became due:** 1. That the Operational Creditor is a Partnership Firm registered vide Partnership Deed dated 16.03.2007 having its Income Tax Department PAN Card bearing No. AADFN6620Q. The Operational Creditor is a reputed, renowned Manufacturing Firm engaged in the business of manufacturing and supply of metal nuts based on the dimensions, ordered. Also, the Operational Creditor is MSME registered and the Registration Certificate viz. Udyog Aadhar Memorandum, bears Unique Acknowledgement Number (UAN): HR03B0013348. A copy of the Partnership Deed dated 16.03.2007 along with the copy of Income Tax Department PAN Card bearing No. AADFN6620Q and Registration Certificate viz. Udyog Aadhar Memorandum, bearing Unique Acknowledgement Number (UAN): HR03B0013348 is hereby marked and annexed as **Annexure A-1.**

		2. That the Corporate Debtor is a company registered under the provisions of the Companies Act, 1956 bearing its Company Identification Number (CIN) as U74899DL1983PLC093808 and was incorporated on 12.03.1983. The Corporate Debtor made purchase orders for Nuts of various dimensions of M4, M5, M6, M7, to which the Operational Creditor supplied the corresponding orders without fail or complaint. A copy of the Master Data of the Corporate Debtor Company as retrieved from the MCA Website is hereby marked and annexed as **Annexure A-2.** 3. That the Operational Creditor and the Corporate Debtor shared a long business relationship wherein the Corporate Debtor made huge orders for subject Nuts and the Operational Creditor supplied the corresponding orders on day to day basis. 4. It is pertinent to mention here that the Corporate Debtor had issued one Open Purchase Order dated 02.04.2015 bearing No. 15/3OPOC/00010, to the Operational Creditor, whereafter, the Corporate Debtor kept on placing Orders time and again, which were duly adhered to and was delivered by the Operational Creditor without fail or any complaint. A copy of the Open Purchase Order dated 02.04.2015 bearing No. 15/3OPOC/00010 issued

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		by the Corporate Debtor to the Operational creditor is hereby marked and annexed as **Annexure A-3.** 5. That, since April, 2016, various invoices were raised by the Operational Creditor time and again against the several orders placed by the Corporate Debtor and the delivery of the said products accordingly by the Operational Creditor as per the orders raised at the Plants of the Corporate Debtor at: i. Plot No. 9G, Sector – 6, Faridabad, Haryana ii. Village – Lakeshwari, Bhagwanpur, Haridwar, Uttrakhand. 6. The last supply made by the Operational Creditor was on 21.06.2018. Till the date, the Corporate Debtor paid to the Operational Creditor in intervals in the running account and used to issue payment advice accordingly. Pursuant to the last supply there were no demand raised by the Corporate Debtor and thus no further supplies, leaving a total admitted balance outstanding to be of Rs. 11,68,173/-. A copy of all the outstanding invoices from 18.10.2016 to 21.06.2018 due & payable by the Corporate Debtor to the Operational Creditor are hereby marked and

annexed as **Annexure A-4.**

7. Thereafter, several requests were made by the Operational Creditor to the Corporate Debtor to clear off the outstanding dues, whereafter, the Corporate Debtor advanced payments in 3 tranches on 31.05.2018, 06.07.2018 and 01.08.2018, totaling to a sum of Rs. 1,08,700/- as evident from the Bank Payment vouchers dated 31.05.2018, 06.07.2018 and 01.08.2018. Also, it is evident from the said vouchers that the said payments were done against Invoices bearing No. 1377, 1455, 1615, 1507, 1615 and 1616 dated 19.09.2016, 27.09.2016, 14.10.2016, 03.10.2016, 14.10.2016, 14.10.2016 respectively. A copy of the Bank Payment vouchers dated 31.05.2018, 06.07.2018 and 01.08.2018 is hereby marked and annexed as **Annexure A-5.**

8. Pursuant to the payments regarding the said invoices mentioned hereinabove and other short payments, the invoices mentioned in the Workings Computation annexed herein with the Petition, were left due and payable by the Corporate Debtor to the Operational Creditor. Thus leaving a balance operational debt outstanding and payable to the tune of Rs. 10,44,718/- (Rupees Ten Lacs Forty Four Thousand Seven Hundred Eighteen only).

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		9. Thereafter, the Corporate Debtor in order to collate the outstanding balances and to acknowledge its debt outstanding, shared the complete Account Statement enlisting all the transactions and details of the payments since the inception, as an attachment vide its Email dated 13.04.2019 to the Operational Creditor. 10. The Ledger Statement shared by the Corporate Debtor mentions the heading to be Ledger from date: 01.04.2016 to Date: 31.03.2019, Generated By: (XP0019) Pankaj Kumar, On: 13.04.2019. It is an admitted fact from the Ledger statement forwarded by the Corporate Debtor itself shows and acknowledges the balance outstanding to be of Rs. 10,99,927/-. 11. The Operational Creditor once again requested the Corporate Debtor to share its Ledger Statement vide its Email dated 14.08.2019, to which the Corporate Debtor shared the same Ledger Statement with the Operational Creditor vide its 2 Emails dated 20.08.2019. 12. Since the Operational Creditor has duly supplied the products on each occasion upon the various demands raised by the Corporate Debtor and the Corporate Debtor has itself vide its Emails dated 13.04.2019 and 20.08.2019 sending its

		Ledger statement the heading to be Ledger from date: 01.04.2016 to Date:31.03.2019 as on 13.04.2019. Hence clearly it is an admitted and due & payable Operational Debt, having not been paid amounting to a clear default. A copy of the Email dated 13.04.2019 sent by the Corporate Debtor to the Operational Creditor along with the self-attached Ledger Statement shared by the Corporate Debtor mentioning the heading to be Ledger from date: 01.04.2016 to Date: 31.03.2019, Generated By: (XP0019) Pankaj Kumar, On: 13.04.2019, along with the Emails dated 14.08.2019 sent by the Operational Creditor and the Reply vide Email dated 20.08.2019 sent by the Corporate debtor is hereby marked and annexed as **Annexure A-6.** 13.It is pertinent to mention here that despite several reminders and requests, the Corporate Debtor has failed to clear the outstanding operational debt and balances against the various pending invoices raised by the Operational creditor towards the various supplies made by the Operational Creditor to the Corporate Debtor. 14.On 22.10.2019, the Operational Creditor has sent a Demand Notice dated 18.10.2019 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 in the requisite FORM 3 under Rule 5 of the Insolvency and Bankruptcy

		(Application to Adjudicating Authority) Rules, 2016 demanding an amount of Rs. 14,73,624/- (Rupees Fourteen Lacs Seventy Three Thousand Six Hundred and Twenty Four only) including the due & payable outstanding Operational Debt of Rs. 10,44,718/- (Rupees Ten Lacs Forty Four Thousand Seven Hundred and Eighteen Only) along with an Interest amount of Rs. 4,28,906/- (Rupees Four Lacs Twenty Eight Thousand Nine Hundred and Six Only) calculated @ 18% p.a. from the due date till the realization of the amount, as clearly mentioned in each of the pending Invoices, till 18.10.2019 and thereon. A copy of the Demand Notice dated 18.10.2019 sent by the Operational Creditor as in Form 3 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 served on the Corporate Debtor along with the Postal Receipt and Tracking Report is hereby marked and annexed as <u>Annexure A-7.</u> 15.Inadvertently, the Operational Creditor missed out 5 invoices bearing Nos. 669, 2751, 608, 320 and 321 dated 14.09.2017, 02.03.2017, 26.05.2017, 03.05.2018 and 03.05.2018 respectively, to be included in the Demand raised by the Operational Creditor vide the Demand Notice dated 18.10.2019. For NEO INDUSTRIES

S.No.	Invoice No.	Invoice Date	Amount (Rs.)
1	669	14.09.2017	11,150
2	2751	02.03.2017	11,865
3	608	26.05.2017	17,947
4	320	03.05.2018	19,092
5	321	03.05.2018	4,720
		TOTAL	64,774

As mentioned above, the Ledger Statement shared by the Corporate Debtor itself shows and acknowledges the balance outstanding to be of Rs. 10,99,927/-. The Demand raised by the Operational Creditor vide the Demand Notice dated 18.10.2019 against the pending Invoices due & payable by the Corporate Debtor, was for the invoices totaling to a sum of Rs. 10,44,718/- and since the invoices mentioned above, were inadvertently not mentioned in the demand notice raised, hence the Operational Creditor, without prejudice, reserves its right to submit a revised claim before the Interim Resolution Professional, if the present Application is admitted by the Hon'ble Adjudicating Authority, and in the alternative shall initiate a separate recovery proceedings before the Hon'ble Civil Court or insolvency proceeding for initiation of CIRP against the Corporate Debtor for the admitted outstanding amount of Rs. 10,99,927/- vide the Email dated 13.04.2019 sent by the Corporate

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		Debtor, itself, to the Operational Creditor. 16. The Corporate Debtor through its Counsel sent a vague and baseless Reply dated 05.11.2019 to the Demand Notice dated 18.10.2019 sent by the Operational Creditor raising demand of the outstanding due & payable Operational Debt by the Corporate Debtor, whereas the Corporate Debtor clearly admitted the outstanding Operational Debt but rejected the liability towards the accrued interest after the default in payment against the respective Invoices. Moreover, offered an arrangement of clearing the outstanding debts consuming further period with 4 equal installments. A copy of the Reply dated 05.11.2019 received by the Operational Creditor to the Demand Notice dated 18.10.2019 is hereby marked and annexed as **Annexure A-8.** 17. It is pertinent to mention here that the Reply dated 05.11.2019 is clear admission of their unwillingness to pay the defaulted invoices. The Reply dated 05.11.2019 received by the Operational Creditor is completely frivolous and misleading. The defenses undertaken by the Corporate Debtor in its Reply to the Demand Notice dated 18.10.2019 sent by the Operational Creditor demanding the payment of outstanding Operational

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		Debt from the Corporate Debtor, is completely spurious, hypothetical and illusory and conveys that the Corporate Debtor owes no amount of debt to the Operational Creditor, herein. The Reply dated 05.11.2019 disputes and rejects the Interest portion of Rs. 4,28,906/-, however, clearly acknowledges and admits the Principal outstanding Operational Debt of Rs. 10,44,718/-. It is an evident fact to bring on record that vide the Reply dated 05.11.2019, the Corporate Debtor also mentions in its Para 2(a) that *"It is pertinent to bring to your kind notice that the liability towards the Operational Creditor is only to the extent of Rs. 10,44,718/-"*. The Reply dated 05.11.2019 sent by the Corporate debtor also offers an arrangement of settlement to the Operational Creditor towards the admitted Operational Debt. However, the Corporate Debtor is not admitting the liability towards the interest, as clearly mentioned on the Invoices raised by the Operational Creditor towards the supplies made to the Corporate Debtor. 18. It is an established principle of law that the "debt" as defined under the Section 3(11) of the Insolvency & Bankruptcy Code, 2016 means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

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		Further, "debt" shall include the interest. If in terms of any agreement interest is payable to the Operational Creditor, then debt will include interest. And since, all the tax invoices raised by the Operational Creditor against the goods supplied to the Corporate Debtor, contains the general conditions regarding the payments, mentioning that Interest @18% p.a. will be charged on bills unpaid after due date, thus the interest is due & payable and liable to be included in the "debt" outstanding to be paid to the Operational Creditor by the Corporate Debtor. 19. That it is apparent from the conduct and the financial status of the Corporate Debtor that it has committed a default and is not willing and is only delaying to wriggle out from paying the admitted outstanding Operational Debt and thus is liable to go under the Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code 2016. The Corporate Debtor cannot have any plausible defense for the default committed in the payment of the outstanding invoices after confirming the balance outstanding for the Operational Debt itself through its own Emails dated 13.04.2019 and 20.08.2019 along with the attached Ledger Statement shared by the Corporate Debtor mentioning the

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heading to be Ledger from date: 01.04.2016 to Date: 31.03.2019, Generated By: (XP0019) Pankaj Kumar, On: 13.04.2019. It is an admitted fact from the Ledger statement forwarded by the Corporate Debtor itself shows and acknowledges the balance outstanding to be of Rs. 10,99,927/-. Moreover, the Corporate debtor had clearly admitted the outstanding due & payable Operational Debt vide its Reply dated 05.11.2019 to the Demand Notice dated 18.10.2019 raised by the Operational Creditor.

20.Thus, there is no plausible dispute that can be raised by the Corporate Debtor after itself confirming the balance outstanding due & payable by the Corporate Debtor to the Operational Creditor, herein. Further, without prejudice, it is submitted that there are no admitted credit notes against these invoices due for payment nor the Corporate Debtor has raised any disputes against the quality, etc, of materials supplied by the Operational Creditor, till date.

21.In the aforesaid facts and circumstances, the Corporate Debtor was called upon to make the payment to Operational Creditor the aforesaid amount of Rs. 14,73,624/- (Rupees Fourteen Lacs Seventy Three Thousand Six Hundred and Twenty Four only)

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including the due & payable outstanding Operational Debt of Rs. 10,44,718/- along with an Interest amount of Rs. 4,28,906/- calculated @ 18% p.a. within 10 days from the receipt of the Demand Notice dated 18.10.2019, failing which the Operational Creditor is now constrained to file the present Application under Section 9 of the Insolvency & Bankruptcy Code, 2016 and pray for the initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor before the Hon'ble Adjudicating Authority, making Corporate Debtor liable for all costs and consequences thereof.

22. Despite several efforts being made by the Operational Creditor numerous times, the Corporate Debtor failed each time after itself confirming the admitted due & payable outstanding Operational Debt.

23. In view of the aforementioned facts, Operational Creditor has sufficient reasons to believe that Corporate Debtor Company is not willing and is only delaying to wriggle out from paying the balance amount of Rs. 14,73,624/- (Rupees Fourteen Lacs Seventy Three Thousand Six Hundred and Twenty Four only) including the due & payable outstanding Operational Debt of Rs. 10,44,718/- (Rupees Ten

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		Lacs Forty Four Thousand Seven Hundred and Eighteen Only) along with an Interest amount of Rs. 4,28,906/- (Rupees Four Lacs Twenty Eight Thousand Nine Hundred and Six Only) calculated @ 18% p.a. from the due date till the realization of the amount, as clearly mentioned in each of the pending Invoices, till 18.10.2019 and thereon. Therefore, there is clear acknowledgement by the Corporate Debtor Company of their default in the payment of the outstanding invoices. 24.The Corporate Debtor/ Respondent Company has failed and neglected to pay the said admitted sum of Rs. 10,44,718/-. An affidavit on behalf of the Operational Creditor/Applicant Company under the provisions of the Section 9(3)(b) of the Insolvency & Bankruptcy Code, 2016, to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid Operational Debt is attached hereto and marked as **Annexure A-9.** 25.In addition, Operational Creditor/Applicant is also attaching a copy of the Ledger Account Statements for the period between 01.04.2016 to 31.03.2019 maintained with respect to the Corporate Debtor. The copy of the Ledger Account Statements for the period between 01.04.2016 to

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		31.03.2019 maintained by the Operational creditor with respect to the Corporate Debtor is attached hereto and marked as **Annexure A-10.** Affidavit under Section 65B of the Evidence Act, 1872 on behalf of the Operational Creditor is hereby marked and annexed as **Annexure A-11.** A copy of the Working for Computation of default in a tabular form is hereby marked and annexed as **Annexure A-12.** 26. Further, a copy of the Statement of Accounts maintained by the Applicant/ Operational Creditor with the Yes Bank, duly stamped by the Yes Bank from 01.10.2016 to 02.11.2019 confirming that there is no payment of the unpaid operational debt by the Corporate Debtor is hereby marked and annexed as **Annexure A-13.** 27. That as stated herein above, the sums mentioned in the previous paragraphs of this Application are definite and are payable by the Respondent No. 1 Company/ Corporate Debtor Company to the Applicant. 28. The Corporate Debtor

		Companyis unable to pay its creditors. It is commercially insolvent and in unwilling to clear the self-admitted Operational Debts. In this premises it is just, fit and equitable that the Petition under the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 be admitted by this Hon'ble Adjudicating Authority. 29. This Application is made bona fide, in the interest of justice, and the balance of convenience is also in favour of passing the orders prayed for herein. **PRAYER** In the circumstances mentioned above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass the following orders: 1. Admit the Instant Application/Petition. 2. Pass an order initiating Corporate Insolvency Resolution Process against the Respondent No. 1 Company/ Corporate Debtor under the provisions

		of the Insolvency and Bankruptcy Code, 2016. 3. Pass an order/direction appointing anInterim Resolution Professional or any other person to take charge over the Respondent No. 1 Company/ Corporate Debtor Company assets, affairs, books of accounts and to conduct the affairs of the Respondent No. 1 Company/ Corporate Debtor Company. 4. Pass an order that pending the hearing and final disposal of Present Application/ Petition an Interim Resolution Professional or any other person be appointed as Interim Resolution Professional to take over the possession of the assets, properties affairs, books of accounts and to conduct the affairs ofRespondent No. 1 Company/ Corporate Debtor company. 5. Pass an order awarding costs of the Present Application. And/ Or 6. Further orders may be passed and

		directions be given as this Hon'ble Adjudicating Authority may deem fit and proper. For NEO INDUSTRIES **Karan Singh** Partner (Partner) M/s Neo Industries (Registered Office at: Plot No. 5, Street No. 3, Indira Complex, Kheri Road, Sector – 87, Neharpar Faridabad, Faridabad – 121002, Haryana)
2.	Amount claimed to be in default and the date on which the default occurred (Attach the workings for computation of amount and dates of default in Tabular Form)	**Rs. 14,73,624/-** (Rupees Fourteen Lacs Seventy Three Thousand Six Hundred and Twenty Four only) including the due & payable outstanding Operational Debt of Rs. 10,44,718/- (Rupees Ten Lacs Forty Four Thousand Seven Hundred and Eighteen Only) along with an Interest amount of Rs. 4,28,906/- (Rupees Four Lacs Twenty Eight Thousand Nine Hundred and Six Only) calculated @ 18% p.a. from the due date of each invoice till the realization of the amount, as clearly mentioned in each of the pending Invoices, till 18.10.2019 and thereon.

6. That from perusal of the Part IV of the Application, it is seen that the Applicant has claimed Rs.14,73,624/- as an unpaid operational debt, for which the date of default mentioned is 18.10.2019.

7. It is submitted by the Applicant that since the Corporate Debtor did not make the due payment of his operational debt, it had issued a Demand Notice dated 18.10.2019 under Section 8 of IBC 2016 at the registered office of the Corporate Debtor, which was served vide speed post on 05.11.2019. The Applicant has filed the Affidavit under Section 9(3)(b) of IBC, 2016.

8. That further, the Applicant has annexed the reply dated 05.11.2019 sent through Advocate Mr. Mohit Nagar in response to the demand notice issued by the Applicant, which is reproduced overleaf :

M.S. NAGAR & CO.

Advocates & Solicitors

Mohinder Singh Nagar
Advocate F-154/1989
M.A. (Eco.), LL.B.
High Courts of Delhi & Chandigarh

Mohit Nagar
Advocate D-3065/2011
LL.M. (United Kingdom)
High Courts & Supreme Court of India

Date: 05.11.19

To,

I. Dhruv Gupta,
Advocate
House No. 47 (G.F.),
Sector – 16A,
Faridabad – 121001.

II. Neo Industries
Plot No. 5, Street No. 3,
Indira Complex, Kheri Road,
Sector – 87, Neharpar,
Faridabad – 121002.

Subject: **Reply to Demand Notice dated 18.10.2019 (Received on 28.10.2019) in Form 3 under Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.**

Our client M/s. Nikko Auto Limited, at Devika Tower 6, Nehru Place, New Delhi – 110019, have placed a Legal Notice served by you upon our clients before me and reply of the same is as under: -

It is submitted that your client has concealed the true and material facts and misguided you to send the present legal notice to our client, hence the contents of your legal notice are totally wrong, false, hence denied.

Para-wise Reply:

TRUE COPY

OFFICES:

Faridabad:
Kothi No. 1-68, O.F.,
Sector-10, Faridabad-121006

Delhi:
C-5, Jangpura B, Mathura Road
New Delhi-110014

Gurugram:
Ch. No. A-27, Lawyers Chamber
Distt. Courts, Gurugram

1. That the contents of para No. 1 of your Demand Notice are wrong, false, incorrect and hence denied. However, it is further brought to your notice that there is no operational debt due from Nikko Auto Ltd. towards you, as claimed in your Demand Notice.

2. That the contents of para No. 2 of your Demand Notice given in Tabular form are also false and frivolous and hence denied. Point wise reply to the same is as follows:

   a) That the contents of Point 1 of Table: PARTICULARS OF OPERATIONAL DEBT, are vehemently denied being vexatious, frivolous and devoid of merits. It is further denied that the Total amount of Rs. 14,73,624/- (Rupees Fourteen Lakh Seventy Three Thousand Six Hundred and Twenty Four Only) is due and payable on account of supply of metal nuts by the operational creditor being Neo Industries and it is further denied that the debt fell due on account of invoices as detailed by you in the said table.

      It is pertinent to bring to your kind notice that the liability towards the operational creditor is only to the extent of Rs. 10,44,718/- (Rs. Ten Lakh Forty Four

Thousand Seven Hundred and Eighteen Only). It is also specifically denied that corporate debtor has to pay any interest as claimed by you in your demand notice.

Reply to Details of Transactions of account of which debt became due is as follows:

1. That the contents of para No. 1 to 14 are denied in toto, save and except which are matter of fact.
2. That it is also imperative to bring to your notice that your client has compromised the matter with our client and as per settled terms and conditions, our client has agreed to pay Rs. 10,44,718/- (Rupees Ten Lakh Forty Four Thousand Seven Hundred and Eighteen Only), in four equal instalments of Rs. 2,61,180/- (Rupees Two Lakh Sixty One Thousand One Hundred and Eighty Only) each, and your client is well aware of the same. The

schedule as fixed for payment of the aforesaid amount is as follows:

i. 1st Installment- 25.11.19 to 30.11.19 = Rs. 2,61,180/-

ii. 2nd Installment- 25.12.19 to 30.12.19 = Rs. 2,61,180/-

iii. 3rd Installment- 25.01.19 to 30.01.19 = Rs. 2,61,180/-

iv. 4th Installment- 25.02.19 to 30.02.19 = Rs. 2,61,180/-

Total Amount Rs. 10,44,718/-

b) That the contents of Point No. 2 of Table: PARTICULARS OF OPERATIONAL DEBT, are misconceived and devoid of merits, hence denied.

c) That the contents of Point No. 3 of Table: PARTICULARS OF OPERATIONAL DEBT, are admitted.

d) That the contents of Point No. 4 of Table: PARTICULARS OF OPERATIONAL DEBT, are also admitted.

e) That the contents of Point No. 5 of the Table: PARTICULARS OF OPERATIONAL DEBT, are denied for want of knowledge.

f) That the contents of Point No. 6 of the Table: PARTICULARS OF OPERATIONAL DEBT, are denied as there is no debt against the corporate debtor.

g) That the contents of Point No. 7 are matter of record. However all the documents enclosed by the operational Creditor are denied, as there is no debt due or payable on the part of the corporate debtor, except to the extent specifically admitted by the corporate debtor.

3. That it is imperative to bring to your kind notice that the aforesaid claim/demand raised by operational creditor is disputed one and cannot be taken to the adjudicating authority.

4. That the contents of para No. 4 of Demand Notice are not applicable to corporate debtor as there is no liability on the part of the corporate debtor as claimed by the operational creditor, hence no question of repayment arises, except what

has already been admitted by the corporate debtor and operational creditor in the aforesaid meeting.

5. That in reply to para No. 5 corporate debtor calls upon operational creditor through this reply to be advised and to withdraw the Demand Notice dated 18.10.2019.

For M.S. Nagar & Co.
Advocates & Solicitors

Mohit Nagar,
Advocate

9. That from perusal of the reply dated 05.11.2019 it is noticed that the Corporate Debtor has agreed to pay Rs.10,44,718/- in four equal instalments in terms of a compromise and settlement arrived between the parties. But no deed of settlement has been placed on record in support of its contention.

10. on perusal of the Affidavit filed by the Operational Creditor under Section 9(3)(b) of IBC 2016, it is observed that it has been averred by the Applicant that no notice of dispute has been given by the Corporate Debtor. However, during the course of hearing, the Ld. Counsel for the Operational Creditor confirmed that the notice of dispute was received

and the same is enclosed with the Application. Therefore, we are of the view that since the notice of dispute has been annexed by the Applicant with the Application, no prejudice shall be caused to anyone.

11. That on issuance of notice to the Corporate Debtor, it has neither filed its written submissions as directed vide order dated 14.02.2020 nor has it filed its reply despite opportunities. Accordingly, its right to file reply was closed ide order dated 18.04.2022 of this Tribunal.

12. During the course of hearing on 18.04.2022, the Ld. Counsel for the Respondent argued that the debt claimed under the present application is not payable in view of the fact that the parties have entered into a compromise and settlement.

13. That after hearing submissions of both the parties and perusing the documents placed on record, this Bench is of the view that the operational debt claimed by the Applicant is arising out of the unpaid invoices and not on the basis of any settlement deed. Further, neither the Corporate Debtor nor the Applicant has produced or placed on record any deed of settlement/compromise on record.

14. That in light of the admission of debt of an amount of more than Rs. 1,00,000/- by the Corporate Debtor in its reply to the demand notice dated 05.11.2019, we are of the considered view that the Operational Creditor has established the default on the part of Corporate Debtor in

payment of the operational debt. The Petition filed under Section 9 fulfills all the requirements of law. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

"(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."

15. Since there is no IRP proposed by the Operational Creditor, this Bench appoints Mr. Satish Joshi (IBBI Registration No. IBBI/IPA-001/IP-P01295/2018-19/12306, Email : recourse2018@gmail.com) as an IRP of the Corporate Debtor with immediate effect from the panel of the IPs recommended by IBBI to this Adjudicating Authority and order that:

"Mr. Satish Joshi is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes."

16. The Operational Creditor is directed to deposit Rs.1,00,000/- (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

17. A copy of this Order shall be communicated immediately to the Operational Creditor, the Corporate Debtor and the IRP named above, by the Registry/Court Officer.

18. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their record.

-Sd- -Sd-

(L. N. GUPTA)
MEMBER (T)

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)