**THE NATIONAL COMPANY LAW TRIBUNAL**
**"CHANDIGARH BENCH, CHANDIGARH"**
**(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 110/Chd/Pb/2020**

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

**In the matter of:**
**M/s Sponge Sales India Private Limited**
Regd. Office: 118, Jagriti Enclave, Delhi East, Delhi-110092.
Work at G.T. Road, Ambey Majra, Opposite Jyoti Kanda, Mandi Gobindgarh, Teshil-Amloh, District-Fatehgarh Sahib, Punjab, PIN-147301

…Petitioner-Operational Creditor

Vs.

**M/s Angro Steels Private Limited**
Redg. Office: Bilga Road,
Village Sahnewal Khurd, P.O.- Sahnewal, District-Ludhiana, Punjab, PIN-141120
CIN No. U27205PB2009PTC032761

…Respondent-Corporate Debtor

**Judgement delivered on: 09. 02.2023**

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

**Present**

For the Petitioner-
Operational Creditor : Mr. D.K. Gupta, Advocate

For the Respondent-
Corporate Debtor : Proceeded against ex parte v.o.d 17.05.2022.

**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 Sponge Sales India Private Limited through its Authorised Signatory (Accountant), Mr. Rakesh Kumar, (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of M/s Angro Steels Private Limited (for brevity 'Corporate Debtor' / 'Respondent'). A copy of the Board Resolution/Authorization is attached as Annexure-A3.

2. The Corporate Debtor, namely, M/s Angro Steels Private Limited, is a Company incorporated on 16.04.2009 under the provisions of the Companies Act, 1956 with CIN No. U27205PB2009PTC032761 with its Redg. Office: Bilga Road, Village Sahnewal Khurd, P.O.- Sahnewal, District-Ludhiana, Punjab, PIN-141120. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition as Annexure A-2.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is running a business of various types of sponge iron. Further, the operational creditor has issued GST Invoices dated 05.06.2019, 06.06.2019, and 13.06.2019 against the supply of various types of sponge iron to the corporate debtor amounting to Rs.23,43,630/- out of which Rs.35,075/- has been received by way of a credit note on 14.06.2019 and thereafter, no payment has been received. In this regard, demand notice under section 8 has been sent to the corporate debtor but the demand notice was received back on 24.09.2019 with the remarks of

refusal. The operational creditor has also filed a complaint under Section 138 of the Negotiable Instrument Act, 1881 before the learned Judge, Fatehgarh Sahib, Punjab which is pending as of date.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 26,27,653/- (Rupees Twenty Six Lakhs Twenty Seven Thousand Six Hundred Fifty-Three only, as of 17.01.2022 plus interest @ 2% per month on the defaulted amount) and default occurred on 16.06.2019. A copy of GST Invoices (Annexure A-5), Ledger statement (Annexure A-6), Computation Sheet (Annexure A-7), and Statement of Account (Annexure A-8) is attached with the main petition.

5. A demand notice in Forms 3 & 4 is stated to be issued by the operational creditor on 16.09.2021 through speed post (Annexure A-10). the same has been returned back with the “refused” as of 24.09.2019. A copy of the postal receipt dated 16.09.2019, the track report dated 26.09.2019, and the envelope containing the demand notice received back with the remark “refused” is attached as Annexure-A10 & A11 of the petition.

6. Notice of this petition was given to the respondent-corporate debtor vide order dated 17.02.2020 of this Adjudicating Authority as to why this petition be not admitted. The learned counsel for the respondent appeared on 15.12.2021 & 08.03.2022. Further, despite notices, none appeared on behalf of the corporate debtor. Therefore, on non-appearance on behalf of the respondent, was proceeded against ex parte vide order dated 17.05.2022.

7. We have heard the learned counsel for the petitioner and carefully perused the record available.

8. The first issue for consideration is whether the demand notice in Forms 3 & 4 dated 16.09.2022 was sent by the operational creditor through the speed post and

was duly served. It may be noted that the said demand notice has been received back with the remark “refused”. The same is observed from the track report dated 26.09.2019 (Annexure A-10). Moreover, the operational creditor has filed an affidavit of service vide diary No.00151/01 dated 21.12.2022 in compliance with the order dated 17.02.2020, wherein the corporate debtor has been served notice of the petition through registered post and via email address as available on the master data of the corporate debtor. The email has not been bounced back.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit dated 17.01.2020 under Section 9(3)(b) by the operational creditor that there is no dispute communicated by the corporate debtor for the unpaid debt and no payment had been received during this period. No reply was received to the demand notice within the stipulated 10 days time from the date of the refusal of the demand notice. There is no pre-existing dispute between the parties at all with regard to the unpaid operational debt. Although it is submitted by the ld. counsel for the petitioner that the operational creditor has filed a complaint under Section 138 of the Negotiable Instrument Act, 1881 before the learned Judge, Fatehgarh Sahib, Punjab which is pending as of date. In this context, reliance can be placed on the decision of Hon’ble NCLAT in the matter of ***Sudhi Sachdev Vs. APPL Industries Ltd***. [2018] ibclaw.in 98 NCLAT, wherein it is held that the pendency of the case u/s 138/441 of the Negotiable Instruments Act, 1881, even if accepted as a recovery proceeding, it cannot be held to be a dispute pending before a court of law. Therefore, the operational debt which is above the threshold limit of rupees one lakh is still due.

10. The other issue for consideration is whether this application is filed within the limitation period. The operational creditor has issued three invoices dated

05.06.2019, 06.06.2019 & 13.06.2019 amounting to Rs.23,43,630/- against the supply of various types of sponge iron. The same to be paid within 10 days of the date of issuing of the invoice. The operational creditor received an amount of Rs.35,075/- on 14.06.2019, and thereafter, no payment has been received. As stated the default occurred on 16.06.2019, whereas, the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 has been filed on 27.01.2020 vide Diary No. 743. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt is Rs. 26,27,653/- (Rupees Twenty Six Lakhs Twenty Seven Thousand Six Hundred Fifty-Three only, as of 17.01.2022 plus interest @ 2% per month on the defaulted amount), against the goods supplied by the operational creditor. 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 of Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020).

12. 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 a default in payment of the claimed operational debt even after the 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 Anro Steels Private Limited, and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

13. In Part-III of Form No. 5, Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vinod Kumar Mahajan and there is nothing adverse against him. In view of the above, we appoint Mr. Vinod Kumar Mahajan,Registration.No.IBBI/IPA-002/IP-N00238/2017-18/10689;E-mail:vkmahajan586@gmail.com, Mobile No. 7042277309 as the Interim Resolution Professional with the following directions :-

i.) The term of appointment of Mr. Vinod Kumar Mahajan shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

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 morals;

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.) The Suspended Board Of Directors is directed to give 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 Resolution Professional 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 the 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. 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. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he 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 retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. 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. 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.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies, and other entities with a request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) 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 the constitution of the Committee 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 Committee within seven days of filing the report of the constitution of the Committee; and

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

14. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

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;

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. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified if any, shall not be terminated or suspended, or interrupted during the 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.

16. 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.

17. The petitioner is directed to deposit an amount of ₹50,000/- (Rupees Fifty 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. A copy of this order be communicated to both 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 a copy of this order to the Interim Resolution Professional at his email address forthwith.

19. This petition is accordingly admitted.

Sd/-

**(Subrata Kumar Dash)**
**Member (Technical)**

Sd/-

**(Harnam Singh Thakur)**
**Member (Judicial)**

Februrary 09, 2023
SD/ASH