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

CP (IB) No.131/Chd/HP/2020

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

In the matter of:

M/s Arora Iron & Steel Rolling Mills Private Limited,
Through its Director Mr. Raminder Pal Singh,
Registered Office at Near Phase VII, Focal Point,
Dharndari Khurd, Ludhiana, Punjab -141010
Email:- raminder@arorairon.com
Phone:- 0161-2677454

…Petitioner/Operational Creditor

Versus

M/s Horizon Metaltech Private Limited,
Through its Director,
Registered Office at 64 MIG House Sector 1,
Parwanoo, Solan, Himachal Pradesh- 173220
Email: vga1977@gmail.com
forgeindia@yahoo.com
alok@forgeindia.com

…Respondent/Corporate Debtor

Judgment delivered on: 28.10.2022

CORAM: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

For the Operational Creditor **:** Dr. Rajansh Thukral, Advocate
Mr. Sidharth Thukral, Advocate

Respondent/Corporate Debtor proceed *ex-parte* vide order dated 02.08.2022

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The instant petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as the '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,

2016 (for short hereinafter referred to as the '**Rules**') by M/s Arora Iron & Steel Rolling Mills Private Limited (for short hereinafter referred to as the '**operational creditor/petitioner**') for initiating Corporate Insolvency Resolution Process (for short hereinafter referred to as the '**CIRP**') against M/s Horizon Metaltech Private Limited (for short hereinafter referred to as the '**corporate debtor/respondent**'). The present petition has been filed in Form 5 as prescribed in Rule 6 (1) of the Rules. The petition is supported by affidavit of Mr. Raminder Pal Singh, Director of the operational creditor, who has been authorized vide Board Resolution dated 07.11.2019 (Annexure A-6).

2. The corporate debtor, namely, Horizon Metaltech Private Limited, is a company incorporated on 07.02.2006 under the Companies Act, 1956, having CIN U27100HP2006PTC029661 and its registered office is at 64 MIG, House Sector 1, Parwanoo, Solan, Himachal Pradesh, -173220. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the corporate debtor is at Annexure A-9 of the petition.

3. The brief facts, as stated in the petition, are that the operational creditor, *inter alia,* is involved in the manufacturing of alloy steel and is North India's largest alloy steel plant with installed capacity of over 2 Lakh metric tons per annum and has been supplying to the respondent/corporate debtor alloy steel for manufacture of the products. It is also stated that operational creditor supplied goods to the corporate debtor from time to time in terms of various invoices and there has been a running account between the operational creditor and the corporate debtor. Further, it has been stated that the operational creditor maintains regular books

of accounts and the accounts are regularly audited in accordance with law and as per the records maintained by them an amount of Rs.5,59,673/- (Rupees Five Lacs Fifty Nine Thousand Six Hundred Seventy Three only) against which there is balance confirmation of Rs.9,72,055/- as on 31.03.2019 after which two more sales were made in terms of last invoice Nos.4008 and 4009 both dated 22.07.2019 for an amount of Rs.8,06,794/- and sales return of Rs.12,19,176/- leaving a balance of Rs.5,59,673/-. According to the petitioner/operational creditor, there are total two invoices outstanding out of which the respondent/corporate debtor has not made any payment since 22.07.2019 and the receipt of goods in respect of both the invoices have been duly acknowledged by the respondent/corporate debtor but no payments have been made.

4. It is also stated that apart from the principal operational debt, in accordance with the terms and conditions mentioned on the invoices, the respondent/corporate debtor is also liable to pay interest @ 24% p.a. calculated on the outstanding amount against these invoices from the date of invoices calculated upto 23.12.2019, amounting to Rs.34,592/-. Calculation sheet of the interest has been annexed as Annexure A-3.

5. It is further stated that despite several requests and reminders, e-mails and consequent assurances, respondent/corporate debtor has not paid the outstanding amount and it continues to be due and payable. Thus, the operational creditor sent a Demand Notice dated 13.01.2020 in Form 3 (Annexure A-1A) by speed post on 13.01.2020 at the registered address of the corporate debtor, calling upon the corporate debtor to pay the unpaid operational debt in full within

10 days from the date of receipt of notice. Copy of postal receipts and tracking reports have been annexed with the demand notice. A perusal of the tracking report annexed with the demand notice shows that the demand notice sent at registered address of the corporate debtor was delivered on 15.01.2020. It is further stated that scanned copy of demand notice was also sent through e-mail dated 15.01.2020 (Page 38 of the petition) to the respondent/corporate debtor on its registered e-mail, as available in the portal of the MCA, which has been delivered and the same has not bounced back. However, after service of the demand notice on the respondent/corporate debtor, neither any payment has been received from the respondent/corporate debtor nor any reply has been received. Moreover, no notice has been given by the respondent/corporate debtor relating to the existence of dispute or any record of pendency of any suit or arbitration proceedings filed before the receipt of such notice in relation to such dispute.

6. On 20.02.2020 notice of this petition was also issued to the respondent/corporate debtor to show cause as to why the petition be not admitted. The petitioner/operational creditor filed affidavit of service vide Diary No.1954 dated 12.03.2020, wherein it has been deposed by learned counsel for the petitioner/operational creditor that he had served notice to the respondent/corporate debtor alongwith copy of petition on 28.02.2020 by speed post and the same was delivered on 02.03.2020. Further it has been deposed that the notice was also sent through e-mail. Copy of original postal receipt, tracking report and copy of e-mail has been annexed with the affidavit of service.

7. When the matter was listed on 17.05.2022, learned counsel for the petitioner was directed to inform the next date of hearing to the respondent through e-mail and place on record copy of e-mail with affidavit on record. In compliance thereof, petitioner/operational creditor filed compliance affidavit vide Diary No.00254/2 dated 14.07.2022, wherein it has been deposed that the petitioner had sent the copy of order to the respondent through e-mail on 21.06.2022 and the same has been delivered and has not bounced back. Copy of the e-mail has been annexed as Annexure A-1 with the said affidavit.

8. We have heard the learned counsel for the petitioner/operational creditor, perused the pleadings and have gone through the records carefully.

9. The first issue for consideration is whether the demand notice dated 13.01.2020 was properly served. As discussed above, the demand notice sent at registered address of the respondent/corporate debtor, as available on the master data of the corporate debtor, was delivered and tracking report showing its delivery has also been annexed with the petition.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The petitioner/operational creditor has filed an affidavit dated 28.01.2020 (Annexure A-9) under Section 9(3)(b) of the Code, wherein it has been deposed that after service of demand notice on the respondent/corporate debtor, neither any payment has been received from the corporate debtor nor the corporate debtor has provided proof of payment within the meaning of Section 8(2)(b)(ii) of the Code, nor there is any reply received from the corporate debtor in response to the demand notice objecting to the demand

leading to inference that the demand and the documents are correct and admitted by the corporate debtor. Also, it is deposed that there is no pre-existing dispute with respect to the subject matter of the present petition.

11. The other issue for consideration is whether this application was filed within limitation. A perusal of the case file shows that the application was filed vide Diary No.887 dated 03.02.2020, and the date of default is 20.09.2019 i.e. the date by which the outstanding invoices dated 22.07.2019 were to be cleared. Therefore, this Adjudicating Authority finds that this application has been filed within limitation.

12. 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 of ₹5,59,673/-plus interest @ 24% p.a. as per Annexure A-3, amounting to Rs.34,592/- as claimed in the petition. As noted above, the operational creditor has provided the details of the debt due and has also annexed with the petition copy of ledger account statement, and invoices. Accordingly, the petitioner/operational creditor has established the debt and the default, which is more than Rupees one lakh i.e. the threshold limit (pre-revised).

13. 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 and established. Also, there is no rebuttal to the claim filed by the petitioner as

respondent/corporate debtor chose not to appear. Accordingly, the petitioner has proved the debt and the default which is above threshold limit.

14. 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 CIRP in the case of the corporate debtor, M/s Horizon Metaltech Private Limited.

15. We also direct moratorium in terms 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;

e) 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; and

f) 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, no Interim Resolution Professional has been proposed by the petitioner. Accordingly, we appoint Ms. Pooja Damir Miglani, having Registration No.IBBI/IPA-002/IP-N01189/2021-2022/13994, E-mail: ipcspdm@gmail.com, Mobile No.7888496109, as the Interim Resolution Professional in the matter of M/s Horizon Metaltech Private Limited, whose name appears at Serial No.33 of the list provided by the Insolvency and Bankruptcy Board of India, which is valid till 31.12.2022. The Law Research Associate of

this Tribunal has checked the credentials of Ms. Pooja Damir Miglani, from the online database provided by the IBBI and there is nothing adverse against him. The following directions are passed with respect to the Interim Resolution Professional: -

i.) The term of appointment of Ms. Pooja Damir Miglani shall be in accordance with the provisions of Section 16(5) of the Code. The Interim Resolution Professional is directed to file his written consent in Form-2 within one week 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 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 the Interim Resolution Professional 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 maximising 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 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 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 ₹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.

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/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

October, 28th, 2022
MK

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

CP (IB) No.131/Chd/HP/2020

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

In the matter of:

M/s Arora Iron & Steel Rolling Mills Private Limited,

…Petitioner/Operational Creditor

Versus

M/s Horizon Metaltech Private Limited,

…Respondent/Corporate Debtor

Present through Video Conferencing:-

For the Operational Creditor : Dr. Rajansh Thukral, Advocate
Mr. Sidharth Thukral, Advocate

Respondent/Corporate Debtor proceed *ex-parte* vide order dated 02.08.2022

Vide separate detailed order of even date, the present petition is admitted.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

October, 28th, 2022
MK