

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT No. IV)**

COMPANY APPLICATION No. IB-1049/ND/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

JMS STEEL & POWER CORPORATION
C-206 Gautam Nagar Hanuman Nagar
JAIPUR 302 021

Also at

Khasra No. 374
Village Dhundaheda Pargna
Ghaziabad 201 102

... **Applicant/
Operational Creditor**

Versus

S T CONSTRUCTIONS PRIVATE LIMITED

... **Respondent/
Corporate Debtor**

Order Pronounced on: 21/ 02/2022



Coram:

**Dr. Deepti Mukesh, Hon'ble Member(Judicial)
Ms. Sumita Purkayastha, Hon'ble Member (Technical)**

MEMO OF PARTIES**JMS STEEL & POWER CORPORATION**

C-206 Gautam Nagar Hanuman Nagar
JAIPUR 302 021

Also at

Khasra No. 374
Village Dhundaheda Pargna
Ghaziabad 201 102

... **Applicant/
Operational Creditor**

Versus

S T CONSTRUCTIONS Private Limited.

G-102, Road No. 13A,
Opp. Saheen Baug
Jasola
NEW DELHI 110 025 ...

Also at

1. A-76, Sector 26, NOIDA,
Uttar Pradesh 201 301
2. S/F 24, Ansal Fortune Arcade
Sector 18, NOIDA
Uttar Pradesh 201 301

**Respondent/
Corporate Debtor**


Appearance:

For the Applicant : Dr. Farrukh Khan, Advocate
Mr. Ateendra Saumya Singh, Advocate
For the Respondent : Mr. Adarsh Tiwari, Advocate
Mr. Vivek Tripathi, Advocate

ORDER**Per: Dr. Deepti Mukesh, Member (Judicial)**

1. The Present Application is filed under section 9 of 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 **JMS Steel & Power Corporation**, through its authorised signatory Mr. Sudhanshu Bihani, authorised by special power of attorney dated 06.08.2018 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against **ST Constructions Private Limited** (for brevity 'Corporate Debtor').
2. The Applicant is a partnership concern engaged in supply of TMT Steel Bars required in the field of construction having its office at Jaipur and Ghaziabad.
3. The corporate debtor is a Private Limited Company, incorporated under the provisions of companies Act, 1956 on 25.06.2004, duly registered with Registrar of Companies, New Delhi with CIN: U45201DL2004PTC27181 and having registered office at New Delhi 110 027. Nominal capital of the Respondent is Rs. 5,50,00,000/- and Paid up share capital of the company is Rs. 3,20,65,990/-.

4. It is submitted by the applicant that the corporate debtor approached the applicant for supply of TMT steel bars for carrying out construction at one of its project sites. In pursuance to the understanding the applicant supplied goods and raised invoices on the corporate debtor and the corporate debtor also agreed to make timely payment of the invoices and also agreed to pay interest @ 24% per annum in case the corporate debtor fails to pay the amount of invoices within the time stipulated therein from the date of delivery of goods. The applicant supplied goods to the corporate debtor during the period from 27.02.2017 to 30.06.2018 and raised invoices accordingly. Over and above an amount of Rs. 20,542/- on account of GST paid by the applicant vide challan dated 20.10.2018 towards interest accrued on various letter of credits is due and payable by the corporate debtor.



5. It is further submitted by the applicant that the corporate debtor has paid only a sum of Rs. 20,00,000/- and the actual outstanding against the corporate debtor is a sum of Rs. 1,56,31,219/- along with interest @ 24% per annum from the due date till the date of actual realisation. The aforesaid outstanding amount has been duly admitted by the corporate debtor in its monthly GST return while claiming the input of the

amount. That none of the invoices were ever disputed by the corporate debtor as the same is evident from the fact that all the monthly GST returns were filed by the corporate debtor and all the amount has been admitted in the monthly GST returns. That the same is also evident from the admitted consolidated statement of account of the operational creditor and the credit input of GST obtained by the corporate debtor establishes the factum of admission of liability on the part of the corporate debtor.

6. It is further submitted by the applicant that having failed to get the outstanding debt, as aforesaid, two demand notices under Section 8 of IB Code dated 19.09.2018 and 20.03.2019 were issued by applicant which were delivered to the corporate debtor. The proof of service is annexed being the track report showing "item delivered". That no dispute was raised by the corporate debtor towards the aforesaid demand notice by way of any reply.
7. The corporate debtor filed affidavit in reply to the application controverting the averments made in the application and has asserted as follows

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- i) That the corporate debtor is executing several construction projects worth 110.00 crore and competent enough to meet all its genuine liabilities/obligations;
 - ii) That the applicant has been supplying TMT bars to the corporate debtor till 19.05.2018 and last invoice raised by the applicant was dated 19.05.2018 and the last payment of Rs. 5.00 lacs was on 29.03.2019;
 - iii) That all the payments made by the corporate debtor were in running account manner as per the understanding and practice of business and the payments made by the corporate debtor were required to be adjusted for the bills/invoices issued in successive order i.e. the running payments made by the corporate debtor will be first adjusted by the applicant for the previous pending bills;
 - iv) That certain invoices which have been randomly mentioned by the applicant in its application as not paid, have already been paid as per the running account system;
 - v) The corporate debtor failed to make payment of total amount of Rs. 31,20,149.39 which pertain to three invoices raised in March 2018 and May 2018. That copy of ledger account of the applicant company maintained by the corporate debtor for 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 is annexed showing entries with

respect to purchases from the Applicant and payment made thereto by the Corporate Debtor;

- vi) That invoices dated 26.02.2018 to 30.06.2018 are not genuine and the same appears to have forged with intention to defraud the corporate debtor;
- vii) That the applicant has not annexed to the application copy of three invoices dated 09.04.2018, 30.04.2018 and 30.04.2018;
- viii) That for the last 12 invoices attached to the application, the applicant has neither supplied the above said invoices nor copies of lorry receipts, test report, weighing scale receipt and the goods receipt;
- ix) That goods receipt for the 12 invoices are missing from the application as the same has never been issued by the corporate debtor;
- x) That the corporate debtor has remitted Rs. 50.00 lacs to the applicant in two equal instalments and the same has been recorded in the relevant orders passed by the Tribunal. That, as on date the applicant stands over paid for Rs. 18,79,851/-;
- xi) That the purchase orders issued by the corporate debtor does not specify any payment of interest in case of delay in payment by the corporate debtor;

8. The applicant filed rejoinder to the reply controverting the averments made in the application and has asserted as follows

- i) That the applicant had issued first demand notice under Section 8 of the Code on 19.09.2018 demanding Rs. 1,76,10,767/- and the corporate debtor in lieu of the said demand notice requested the applicant not to initiate any legal proceeding qua it and assured that payments shall be settled very shortly;
- ii) That corporate debtor paid a sum of Rs. 15,00,000/- to the applicant and at that point of time assured the applicant that the remaining balance shall be settled soon;
- iii) That no notice of dispute was ever raised by the corporate debtor and the defense adopted by the corporate debtor in its reply is fabricated and manufactured defense;
- iv) That when the corporate debtor again failed in adhering to its commitment of payment, the applicant was constrained to issue a fresh demand notice under Section 8 of the Code vide notice dated 20.03.2019 demanding outstanding amount of Rs. 1,61,10,767/;
- v) That the corporate debtor, upon receipt of the aforesaid second demand notice again paid a sum of Rs. 5.00 lacs. Since the corporate debtor failed to discharge its liability, the applicant filed application u/s 9 of the Code;

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- vi) That when the matter was listed before this Tribunal on 10.07.2019, the corporate debtor apprised the Tribunal that proposal for settlement is under process and as per the directives of this Tribunal agreed to make payment of Rs. 25.00 lacs as part payment;
- vii) That when the matter was again listed before this Tribunal on 21.08.2019, the corporate debtor was directed to make payment of cost of Rs. 25,000/- to the applicant, failing which right to file reply is closed. The Corporate Debtor made a payment of cost and reply was taken on record. Further, if the corporate debtor is interested in settlement, a proposal for settlement is to be sent to the counsel for the applicant.
9. Letter from the bank of applicant evidencing non-payment of operational debt has also been filed in compliance of Section 9 (3) (c) of the Code.
10. As per Form 5, Part IV, the corporate debtor is liable to pay an outstanding sum of Rs. 1,56,31,219/- (Rupees one crore fifty-six lacs thirty-one thousand two hundred nineteen only). As per the details given in tabular form, different bills have fallen due on different dates starting from 27.02.2017 to 30.06.2018

11. The registered office of the corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
12. As per Form 5 last invoice was raised on 30.06.2018 and after issuance of demand notice dated 20.03.2019, the corporate debtor made last payment of Rs. 5,00,000/- to the applicant on 29.03.2019. The application is filed on 15.04.2019. Therefore, the debt is not time barred and the application is filed within the period of limitation.
13. Heard submissions made and perused the documents on record. The present application is complete and the Applicant is entitled to claim its dues. From the aforesaid chronological events, it is clear that the defense adopted by the corporate debtor in its reply is nothing but a sham. The corporate debtor notwithstanding its undertaking duly recorded in the order sheets passed by this Tribunal to the effect of settling the matter with the applicant, has now taken a summersault. Moreover, on perusal of the records it is found that, in support of its claim, the applicant has brought on record copies of purchase orders, invoices and lorry receipts correlating delivery of goods to the corporate debtor. We are convinced that the debt is due and

payable and default has occurred. As held by the Hon'ble Supreme Court in case of "Mobilox Innovative Private Limited vs. Kirusa Software Private Limited" the dispute has to be genuine and not mere moonshine dispute.

Over and above the Corporate Debtor has time and again made payments and / or agreed to pay during the process after issuance of Section 8 notice. The daily orders also record the opportunities sought by the Corporate Debtor for settling the matter and agreeing to make part payment, which is an admission of the debt. Hence we are of the opinion that application deserves to be admitted. Accordingly, the Application is admitted in terms of Section 9 (5) of IBC, 2016.

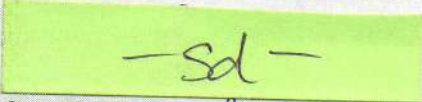
14. The applicant has not proposed the name of the Interim Resolution Professional (IRP). We, therefore, appoint Mr. Anshuman Kaushik, having registration no. IBBI/IPA-001/IP-P-02523/2021-2022/13825, having email address: anshumanksk@gmail.com and office at: P-93, 1st floor, C.R. Park, New Delhi, National Capital Territory of Delhi - 110019 to act as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate debtor and specific consent should be filed in

Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

15. We direct the Operational Creditors to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Anshuman Kaushik to meet out the expense 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 needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

17. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

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Ms. Sumita Purkayastha
Member (Technical)

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Dr. Deepti Mukesh
Member (Judicial)