

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

(IB)-3390(ND)2019

IN THE MATTER OF:

**M/s. D.P Industries
Through its Partner;
Mr. Atul Jain
72, Rajasthani Udyog Nagar
New Delhi-110033**

...Operational Creditor

VERSUS

**Jai Sai Ram Steel Pvt. Ltd.
Plot No. 130, Ground Floor,
Block AA, Shalimar Bagh,
New Delhi-110088**

...Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on: 30.07.2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Operational Creditor : Mr. Kanwal Choudhary, Adv.

For the Corporate Debtor : None

ORDER

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

This 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 by M/s. D.P Industries (for brevity '**Operational Creditor**') through its Representative, Mr. Atul Jain, who is authorized by their Board Resolution dated 06.09.2019, with a prayer to initiate Corporate Insolvency Resolution Process against M/s. Jai Sai Ram Steel Pvt. Ltd. (for brevity '**Corporate Debtor**').

2. That the Corporate Debtor namely M/s. Jai Sai Ram Steel Pvt. Ltd. is a Company incorporated on 07.07.2010 with CIN No. U27100 DL2010PTC205436 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 72, Rajasthani Udyog Nagar, GT Karnal Road, New Delhi-110033, which falls under the jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 50,00,000/- and Paid-up Share Capital is Rs. 1,00,000/- as per the Master Data of the Corporate Debtor.

4. That it is stated by the Operational Creditor that it had done the job work of re-rolling ferrous and Non-Ferrous metals for the Corporate Debtor from the period 15.07.2017 to 04.05.2019.



5. That the aforesaid service was provided against various invoices raised on the Corporate Debtor, whose details are mentioned in the running ledger account maintained by the Operational Creditor. The scanned copy of the ledger is reproduced below :

D. P. Industries
72, Rajasthani Udyog Nagar,
G T Karnal Road,
Delhi - 110 033
Contact : 9350881868

ADMITTED - 6
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Jai Sai Ram Steel (P) Ltd.
Ledger Account
Vill. Ahmedpur, Delhi Road, Behind Diwan Farm
Sonipat (Haryana)

1-Apr-2017 to 17-May-2019

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
15-7-2017	Cr JOB WORK	Sales	08	74,472.75	
	Cr JOB WORK	Sales	09	31,541.40	
18-7-2017	Cr JOB WORK	Sales	10	31,541.40	
	Cr JOB WORK	Sales	11	31,541.40	
	Cr JOB WORK	Sales	12	74,472.75	
27-7-2017	Cr JOB WORK	Sales	20	31,541.40	
	Cr JOB WORK	Sales	21	31,541.40	
28-7-2017	Cr JOB WORK	Sales	23	31,382.10	
	Cr JOB WORK	Sales	24	31,382.10	
7-9-2017	Cr JOB WORK	Sales	53	87,615.00	
	Cr JOB WORK	Sales	54	31,382.00	
8-9-2017	Cr JOB WORK	Sales	55	74,473.00	
12-9-2017	Cr JOB WORK	Sales	58	56,950.00	
22-9-2017	Cr JOB WORK	Sales	63	56,950.00	
	Cr JOB WORK	Sales	64	30,851.00	
26-9-2017	Cr JOB WORK	Sales	65	30,851.00	
	Cr JOB WORK	Sales	74	56,074.00	
5-10-2017	Cr JOB WORK	Sales	75	57,560.00	
17-10-2017	Cr JOB WORK	Sales	81	52,250.00	
	Cr JOB WORK	Sales	95	57,083.00	
22-10-2017	Cr JOB WORK	Sales	96	56,870.00	
	Cr JOB WORK	Sales	99	51,826.00	
30-10-2017	Dr The Vaish Coop. Adarsh Bank Ltd	Receipt	100	49,808.00	
9-11-2017	Cr JOB WORK	Sales	22		3,00,000.00
10-11-2017	Cr JOB WORK	Sales	118	67,756.00	
13-11-2017	Cr JOB WORK	Sales	119	61,862.00	
	Cr JOB WORK	Sales	122	61,702.00	
20-11-2017	Cr JOB WORK	Sales	123	30,586.00	
	Cr JOB WORK	Sales	131	56,552.00	
21-11-2017	Cr JOB WORK	Sales	132	31,117.00	
1-12-2017	Cr JOB WORK	Sales	133	68,818.00	
	Cr JOB WORK	Sales	144	56,339.00	
	Cr JOB WORK	Sales	145	58,914.00	
8-12-2017	Cr JOB WORK	Sales	146	55,967.00	
9-12-2017	Cr JOB WORK	Sales	157	58,198.00	
10-12-2017	Cr JOB WORK	Sales	160	67,490.00	
	Cr JOB WORK	Sales	161	45,454.00	
11-12-2017	Dr The Vaish Coop. Adarsh Bank Ltd	Receipt	162	50,233.00	
17-12-2017	Cr JOB WORK	Sales	32		2,00,000.00
	Cr JOB WORK	Sales	170	64,224.00	
26-12-2017	Cr JOB WORK	Sales	171	57,136.00	
	Cr JOB WORK	Sales	184	55,808.00	
	Cr JOB WORK	Sales	185	60,826.00	
Carried Over				21,28,941.70	5,00,000.00

D. P. Industries
Jai Sai Ram Steel (P) Ltd. Ledger Account : 1-Apr-2017 to 17-May-2019

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Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			21,28,941.70	5,00,000.00
9-1-2018	Cr JOB WORK	Sales	213	56,870.00	
	Cr JOB WORK	Sales	214	61,118.00	
	Cr JOB WORK	Sales	215	57,083.00	
28-1-2018	Cr JOB WORK	Sales	234	51,826.00	
	Cr JOB WORK	Sales	235	62,446.00	
5-3-2018	Cr JOB WORK	Sales	273	57,083.00	
6-3-2018	Cr JOB WORK	Sales	274	51,826.00	
	Cr JOB WORK	Sales	276	56,074.00	
9-3-2018	Cr JOB WORK	Sales	278	56,127.00	
	Cr JOB WORK	Sales	279	55,967.00	
10-3-2018	Cr JOB WORK	Sales	280	51,826.00	
	Cr JOB WORK	Sales	281	50,764.00	
				<u>27,97,951.70</u>	<u>5,00,000.00</u>
	Dr Closing Balance				22,97,951.70
				<u>27,97,951.70</u>	<u>27,97,951.70</u>
1-4-2018	Cr Opening Balance			22,97,951.70	
13-4-2018	Cr JOB WORK	Sales	10	55,808.00	
	Cr JOB WORK	Sales	11	56,074.00	
	Cr JOB WORK	Sales	12	56,074.00	
4-8-2018	Cr Jobwork In Interstate	Sales	177	49,607.00	
	Cr Jobwork In Interstate	Sales	178	49,654.00	
29-8-2018	Dr The Vaish Coop. Adarsh Bank Ltd	Receipt	33		18,70,977.00
30-8-2018	Cr The Vaish Coop. Adarsh Bank Ltd	Payment	155	18,70,977.00	
5-1-2019	Dr The Vaish Coop. Adarsh Bank Ltd	Receipt	66		1,88,430.00
14-1-2019	Cr Jobwork In Interstate	Sales	446	37,843.00	
	Cr Jobwork In Interstate	Sales	447	37,665.00	
				<u>45,11,653.70</u>	<u>20,59,407.00</u>
	Dr Closing Balance				24,52,246.70
				<u>45,11,653.70</u>	<u>45,11,653.70</u>
1-4-2019	Cr Opening Balance			24,52,246.70	
4-5-2019	Cr Jobwork In Interstate	Sales	47	50,268.00	
	Cr Jobwork In Interstate	Sales	48	51,778.00	
17-5-2019	Dr The Vaish Coop. Adarsh Bank Ltd	Receipt	5		86,600.00
				<u>25,54,292.70</u>	<u>86,600.00</u>
	Dr Closing Balance				24,67,692.70
				<u>25,54,292.70</u>	<u>25,54,292.70</u>

6. That it is averred by the Operational Creditor in the Part-IV of the Application that the total amount of 'unpaid Operational Debt' is to the tune of Rs.24,67,692.70/-. The 'date of default' mentioned by the Operational Creditor in the Application is 17.05.2019

7. It is submitted by the Operational Creditor that since the Corporate Debtor did not make the due payment of his Operational Debt, it had issued a Demand Notice dated 27.05.2019 (Annexure-H) under Section 8 of IBC, 2016 at the Registered office of the Corporate Debtor. The Operational Creditor has also annexed the Notice of Dispute dated 06.06.2019 sent by the Corporate Debtor through Mr. Vishnu Aggarwal. The Applicant has averred the same in its Affidavit filed under Section 9(3)(b) of IBC 2016.

8. It is further submitted by the Applicant that the Corporate Debtor (CD), through its reply to the Demand Notice, has denied the amount to be due and instead took a vague and absurd plea that huge quantity of material supplied for performing the job is lying with the Operational Creditor and has not been returned. It is added by the Corporate Debtor that upon receipt of its material, the Corporate Debtor shall settle the accounts.

9. That as regards to the Notice of Dispute, the Operational Creditor has averred the following :

“5. That plea taken by Corporate Debtor in its reply is wholly misconceived, misrepresented, mischievous, vague, absurd and without any basis. Nothing is said as to which material?, what quantity? When not returned? The said plea is therefore a moonshine and cannot be considered to be any notice of dispute.”

The scanned Copy of the Notice of Dispute raised by the Corporate Debtor is reproduced overleaf :

JAI SAI RAM STEEL PVT. LTD.

Manufactures of : M.S & S.S Stainles Steel
Off. GF, AA- 130, Shalimar Bagh, Delhi-110088.
Email : jaisairamsteel@yahoo.in

Ref No :

Dated : 06/06/19

Through E-mail/Speed Post

M/s. D. P. Industries
72, Rajasthan Udyog Nagar,
G. T. Karnal Road, Delhi - 110033

Kind Attn. Mr. Atul Jain, Partner

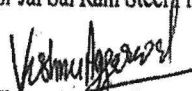
Sir,

We have received your notice dated 27th May, 2019, whereby you have raised demand of Rs. 24,67,692.70 from us towards the amount of invoices raised by you on us for performing job work. In response to your aforesaid notice dated 27th May, 2019, we submit as under:-

1. Ledger account annexed by you with your aforesaid notice is not correct. We are not liable to pay the amount as demanded by you for the job work done by you.
2. Huge quantity of our material supplied by us to you for performing job work is lying with you which you have not returned to us.
3. We call upon you to return our aforesaid material to us.
4. Upon receipt of our material, we shall settle the accounts with you and will pay whatever amount, if any, is found to be due to be paid to you.

Thanking you,

Yours faithfully,
for Jai Sai Ram Steel Private Limited


Vishnu Aggarwal

10. That the Corporate Debtor has not filed its reply despite opportunities.

11. We have heard the Operational Creditor, gone through his averments in the Application and the notice of dispute raised by the Corporate Debtor. As regards to the delivery of the Demand Notice, this Bench, during the hearing, had observed that the Applicant has only annexed the proof of dispatch of the Demand Notice and has not annexed the tracking report of delivery of the Demand Notice. In response, the Ld. Counsel appearing for the Operational Creditor placed reliance on the Notice of Dispute dated 06.06.2019 sent to him by the Corporate Debtor. Obviously, the Corporate would not have been able to reply or raise notice of dispute, had he not received the demand notice. Hence, it is deemed that the Demand Notice was successfully delivered to the Corporate Debtor.

12. We also notice that the Corporate Debtor, through its Notice of Dispute, has not been able to point out anything specific or place any document, which would demonstrate that the dispute was raised prior to issuance of the Demand Notice. During the hearing, the Counsel for the Corporate Debtor mentioned that prior to issuance of the Demand Notice, they had filed an FIR against the Operational Creditor in Police Station Sonipat. However, neither the FIR is placed on record nor is there any mention of it in the reply of the Corporate debtor to the Demand Notice/ Notice of Dispute. Therefore, the plea of filing the FIR is a feeble argument and it is only an assertion of a fact without any supporting evidence being placed on record.

13. In the given facts and circumstances, the Operational Creditor has established the default on the part of Corporate Debtor in payments of the operational debt. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC, 2016. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the IBC, 2016.** 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 Securitization 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.”

14. As proposed by the Operational Creditor, this Bench appoints Mr. Sunil Prakash Sharma IP having Registration No. IBBI/IPA-002/IP-N00551/2017-18/11726 as an IRP of the Corporate Debtor with immediate effect.

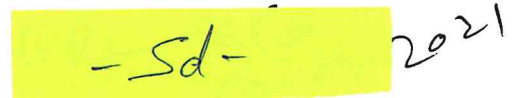
“Mr. Sunil Prakash Sharma, IP having IIBI Registration No. IBBI/IPA-002/IP-N00551/2017-18/11726 is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes.”

15. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two 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.

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



(L. N. GUPTA)
MEMBER (T)

 2021

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)