

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

(IB)-2963(ND)2019

IN THE MATTER OF:

**Mr. Tarun Khanna
Office at 484, Block-II
Delhi High Court
New Delhi-110003**

...Operational Creditor

VERSUS

**M/s. Deltronix India Limited
E-3, Sector 59,
Noida, U.P-201301**

...Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on : 03.02.2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Operational Creditor	: Mr. S.P Singh Chawla, Advocate
For the Corporate Debtor	: Mr. Shashank, Advocate



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 Mr. Tarun Khanna (for brevity 'Operational Creditor'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Deltronix India Limited (for brevity 'Corporate Debtor').

2. That the Corporate Debtor namely, M/s. Deltronix India Limited is a Company incorporated on 26.07.1984 with CIN No. U51909DL1984PLC018787 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at A-323, Sarita Vihar, New Delhi, 110044 and the Corporate Office at E-3, Sector 59, Noida, U.P-201301.

3. That the Authorized Share Capital of the Corporate Debtor is Rs.40,00,00,000 and Paid-up Share Capital is Rs.33,93,41,500 as per the Master Data of the Corporate Debtor.

4. That the Operational Creditor Mr. Tarun Khanna is a practicing Advocate, who has rendered his legal services to the Corporate Debtor.

5. It is submitted by the Operational Creditor in the Part IV of the Petition that the amount of his total debt claimed is Rs. 11,17,000/-.

6. It is averred by the Operational Creditor that:

"3. It is submitted that the total outstanding amount for rendering the legal services for pursuing various matters before the Tribunals and High Court by the Operational Creditor to the Corporate Debtor for the period of 01.04.2017 to 15.03.2018....."

"4. As such as on date of this application a total sum of Rs.11,17,000/- remained outstanding."

7. That the Operational Creditor has annexed the running Ledger Account depicting the transactions, which took place between the parties. The same is reproduced below :

ANNEXURE-A

(Forming part of Form of Demand Notice/Invoice Demanding Payment)

M/S DELTRONIX INDIA LIMITED
A-323, Sarita Vihar, New Delhi

S.No	Invoice No	Invoice Date	Invoice Amt (Rs)	Pending Amt(Rs)	Due Date	Date of Default
1.	P/30/16	21.12.2016	16,500/-	Nil	28.12.2016	29.12.2017
2.	P/31/16	30.12.2016	16,500/-	Nil	06.01.2017	07.01.2017
3.	P/35/16	31.01.2017	33,000/-	Nil	07.02.2017	08.02.2017
4.	P/37/16	18.03.2017	16,500/-	Nil	25.03.2017	26.03.2017
5.	P/05/17	05.05.2017	33,000/-	Nil	12.05.2017	13.05.2017
6.	P/07/17	27.05.2017	49,500/-	Nil	03.06.2017	04.06.2017
7.	P/08/17	01.06.2017	33,000/-	Nil	08.06.2017	09.06.2017
8.	P/11/17	14.07.2017	49,500/-	Nil	21.07.2017	22.07.2017
9.	P/12/17	21.07.2017	16,500/-	Nil	28.07.2017	29.07.2017
10.	P/15/17	05.09.2017	5,25,000/-	Nil	12.09.2017	13.09.2017
11.	P/16/17	07.10.2017	49,500/-	Nil	14.10.2017	15.10.2017
12.	P/17/17	15.10.2017	16,500/-	Nil	22.10.2017	23.10.2017
13.	P/18/17	24.10.2017	16,500/-	Nil	31.10.2017	01.11.2017
14.	P/21/17	07.12.2017	3,00,000/-	1,91,500/-	14.12.2017	15.12.2017
15.	P/25/17	10.01.2018	9,25,500/-	9,25,500/-	17.01.2018	18.01.2018

TOTAL:

2,097,000/-

1,117,000/-

8. That it is submitted that after repeated follow ups, the Corporate Debtor on 19.08.2017 and thereafter, issued various cheques, drawn on the Punjab National Bank, Sector 27, Noida for liquidating his operational debt against the two unpaid invoices dated 07.12.2017 and 10.01.2018, particulars of which are given below:

Date of Cheque	Cheque No.	Amount (in Rs.)
19.01.2018	907675	2,25,000
05.01.2018	907649	2,25,000
14.08.2017	145149	1,50,000

9. That it is stated that out of the three aforesaid cheques, two cheques bearing No. 907649 and 907675 got dishonored with the remark "Payment Stopped By Drawer".

10. That it is submitted by the Operational Creditor that since the Corporate debtor did not make the due payment, it had issued a Demand Notice dated 24.09.2019 under Section 8 of IBC, 2016 at the Registered as well as the Corporate Office of the Corporate Debtor claiming a total operational debt of Rs. 11,17,000/-.

11. That during the course of final hearing, it was submitted by the Ld. Counsel appearing for the Operational Creditor that the Demand Notice dated 24.09.2019 could not be served at the registered office of the Corporate Debtor. However, the same was delivered at the Corporate Office situated at E-3, Sector 59, Noida, U.P-201301 via speed post. That the tracking report confirming

delivery of the Demand Notice has been placed on record on page 32 of the Application. It is added by the applicant that no notice of dispute has been received by the Operational Creditor which is also reflected by him in the Affidavit dated 07.11.2019 filed under Section 9(3)(b) of IBC, 2016

12. That the Corporate Debtor has filed its reply, wherein it has denied that an amount of Rs. 11,17,000/- or any other amount is due and payable by way of principal amount to the Operational Creditor.

13. That it is averred by the Corporate Debtor that :

“6. The Applicant does not have locus to file the said application as the statement itself shows that the alleged services were not rendered him but someone else. The Code does not allow the applicant to become Operational Creditor on behalf of third party. The third party has already exercised their rights and has been paid substantial amount. The Applicant has claimed total amount of Rs. 9,05,000/- besides Rs. 20,500/- as clerkage which the Respondent never agreed to, as per statement attached in Annexure 2 page 18. Out of which, Rs. 7,00,000 charged for appearance charge of Senior counsel, Rs. 30,000/- for drafting of Appeal by third party, Rs. 75,000/- appearance charges of counsel, Rs. 55,000/- is reimbursement. Therefore, if at all and without prejudice, it is stated that besides Rs. 45,000/- no other amount can be subjected to the Code. Similarly, at page 17, the invoice of Rs. 3,00,000 allegedly raised for drafting of appeal proposed to be filed in NCLAT, was considered exorbitant and parties sat together to resolve. After having arrived at mutual consent, the Respondent paid Rs. 1,08,500/- to the Applicant. Therefore, the bill has no standing and already been paid.”

14. It is further submitted by the Corporate Debtor that he had engaged the legal services of the Operational Creditor for two matters, one before the Hon'ble NCLAT, New Delhi and other before the Debt Recovery Tribunal (DRT), New Delhi.

15. It is further averred by Corporate Debtor that :

"b. That the Operational Creditor thereafter approached and engaged the Legal Services of Mr. Naseer Ahmad (Senior Advocate) to act and appear on behalf of the Corporate Debtor in the matter before NCLAT for which the Operational Creditor has raised the invoice dated 07.12.2017 bearing Invoice No. P/21/17 for the amount of Rs. 3,00,000/-....."

It is added by the Corporate Debtor that *"the claim towards the said invoice has been settled and a sum of Rs. 1,08,500/- has been paid to Mr. Naseer Ahmed by cash directly."* The following are the details as relied upon by the Corporate Debtor :

Sr.No	Particular	Amount
1.	<i>Drafting of Appeal before NCLAT</i>	<i>Rs. 75,000</i>
2.	<i>Appearance before NCLAT on two dates</i>	<i>Rs. 30,000</i>
3.	<i>Miscellaneous</i>	<i>Rs. 3,500</i>
	Total Amount	Rs.1,08,500

16. It is stated by the Corporate Debtor that subsequently, the Operational Creditor engaged the services of Mr. Rakesh Tikku, Senior Advocate in the matter before the Debt Recovery Tribunal, New Delhi. It is added that the said matter was taken up further in the appeal before the Debt Recovery Appellate Tribunal by Mr. Rakesh Tikku. It is

further stated by the Corporate Debtor that for the said matter and the Invoice dated 10.01.2018 bearing Invoice No. P/24/17 attached as Annexure -2 in the main Petition, the Respondent had issued a cheque dated 25.01.2018 bearing Cheque No. 907689 for a sum of Rs 8,55,000/- in the name of Smt. Aarushi Tiku D/o Mr. Rakesh Tiku.

17. It is stated by the Corporate Debtor that the said cheque was dishonored on presentation and thereafter, Smt. Arushi Tiku had filed a criminal complaint under Section 138 of the Negotiable Instrument Act, 1881 bearing number CC No. 4824/18 against the Respondent Corporate Debtor, which is pending before the Ld. Chief Metropolitan Magistrate, New Delhi. It is further stated that the Corporate Debtor by mutual understanding has made a part payment of Rs 4,05,000/- to Smt. Aarushi Tiku and further outstanding amount of Rs 4,05,000/- is disputed and is pending before the Hon'ble Court.

18. That the Corporate Debtor has filed its written submissions. It has further added that the Applicant has claimed total amount of Rs 9,05,000/- besides Rs 20,500/- as clerkage, which the Respondent never agreed to or admitted anywhere. It is further stated that it had made the payment of Rs 5,00,000/- (subject to TDS of Rs.50,000/-) to Smt. Arushi Tiku for appearance of Mr. Rakesh Tiku, Senior Advocate who has rendered the legal services.

19. That the Operational Creditor has filed its written submissions and stated in reference to the dishonoring of cheques that the cheques once issued and after being dishonored are to be taken as admission of debt. It is stated that in the matter of **Sudhi Sachdev vs APPL Industries Ltd. (Company Appeal (AT) (Insolvency) No. 623 of 2018)**, the Hon'ble NCLAT had held that :

".....The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a court of law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute....."

20. It is further stated by the Operational Creditor in its written submissions that :

"9. That the corporate debtor has made false and vexatious allegations whereas they have tried to create confusion by clubbing two different transactions for which were separate which is also clear from seeing the contents of the invoices raised on the Corporate Debtor. That the Applicant had duly appeared on behalf of Corporate Debtor before DRT on various dates in case bearing S.A no. 274/2017 and in appeal no.(s) 555/2017 and 39/2018 before DRAT, New Delhi and also drafted the appeal and appeared on behalf of Corporate Debtor before Hon'ble NCLAT bearing case no. Company Appeal (AT) (Insolvency) No. 297 of 2017."

21. After going through the records, averments and hearing submissions of both the parties, this Bench observes :

- (i) That the Corporate Debtor has neither brought the existence of dispute nor filed any record of pendency of any suit or arbitration proceedings before the receipt of such a notice or invoice in relation to such dispute within 10 days from the receipt of the Demand Notice, in terms of the Section 8(2)(a) of IBC 2016. Nor it had made the payment of the Operational Debt in terms of Section 8(2)(b) of IBC 2016.
- (ii) That there is no explanation given by the Corporate Debtor that as to why did it issue cheques to the Operational Creditor which got dishonored with the remarks "Payment Stopped by Drawer".
- (iii) That the Corporate Debtor has also not brought any communication on record, which could suggest that it had issued instructions to the Operational Creditor to not to present the said cheques.

22. That further, the defense taken by the Corporate Debtor appears to be illusionary. If the Corporate Debtor had made the payment to Smt. Aarushi Tiku directly against the invoice dated 10.01.2018 raised by the operational creditor, then why did it issue cheques to the Operational Creditor at the first instance. The Corporate Debtor has failed to answer this.

23. Furthermore, there is no correspondence on record, which depicts that the Operational Creditor had asked the Corporate Debtor to make the payment of Rs.9,25,500/- in lieu of the Invoice dated 10.01.2018 directly to Smt. Aarushi Tikku.

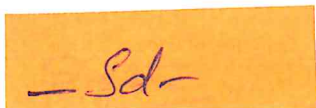
24. In the facts and circumstances of the case narrated above, we are of the view that the Operational Creditor has succeeded in establishing the default on the part of Corporate Debtor in making payment of the operational debt. The Petition filed under Section 9 fulfills all the requirements of the law. Therefore, **we admit the petition in terms of Section 9(5) of the IBC.** Accordingly, the CIRP is initiated and moratorium is declared in terms of provisions 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 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.”

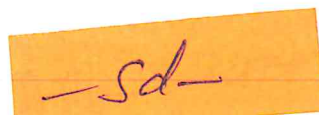
25. As proposed by the Operational Creditor, this Bench appoints Sh. Santosh Sharma with Registration No. IBBI/IPA-002/IP-N00898 / 2019-2020/12842 as IRP (sci.santoshsharma@gmail.com) having office at Rajrani Sharma 6/129, Near Prakash Diary, Lodhi Mohalla, Shahdara, New Delhi-110032 subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of the IBC, 2016.

26. 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.

27. A copy of this order shall be communicated to the Operational Creditor, the Corporate Debtor and Sh. Santosh Sharma, IRP Registration No. IBBI/IPA-002/IP-N00898/2019-2020/12842 (email id- sci.santoshsharma@gmail.com), by the Court Officer/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. GUPTA)
MEMBER (T)



(ABNI RANJAN KUMAR SINHA)
MEMBER (J)