

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 17.08.2020

**THROUGH VIDEO CONFERENCING**

**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 148/BB/2020	For orders	Sec 9 of I & B code 2016	Supertronix	Sharanjith Shetty K, Advocate	All Digital Network India Ltd	Siddarth Suman, Advocate

ADVOCATE FOR PETITIONER/s:

ADVOCATE FOR RESPONDENT/s:

**ORDER**

CP (IB) No. 148/BB/2020 is rejected by separate order.

**MEMBER (T)**

**MEMBER(J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P. (IB) No.148/BB/2020  
U/s 9 of the IBC, 2016  
R/w Rule 6 of I&B(AAA) Rules, 2016

**Between:**

M/s. Supertronix,  
No.122, SadarPatrappa Road,  
Bangalore – 560 002 - Petitioner/ Operational Creditor

**And**

All Digital Network India Limited,  
B89, 5<sup>th</sup> Main Road, KSIDC  
Industrial Estate,  
Rajajingar,  
Bangaluru – 560 095 - Respondent/Corporate Debtor

**Date of Order: 17<sup>th</sup> August, 2020**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present (Video Conference):**

For the Applicant : Shri. Sharajith Shetty

For the Respondent : Shri Siddarth Suman

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB) No.148/BB/2020 is filed by M/s. Supertronix (hereinafter referred to as 'Petitioner/Operational Creditor') U/s 9 of the IBC, 2016, R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s.All Digital Network India Limited (hereinafter referred to as 'Respondent/Corporate Debtor') on the ground that it has committed default for a total amount of Rs.6,79,116.23/-(Rupees

Six Lakhs Seventy Nine Thousand One Hundred and Sixteen and Twenty Three paise only) as on 19.03.2013.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

- (1) M/s. Supertronix(Operational Creditor) is a company having its registered office at No.122, SadarPatrappa Road, Bengaluru – 560 002. It is a proprietary concern dealing in T.V. Accessories, Dish Antennas, Cable T.V Accessories, Optic Fibre Cables and Accessories. It is carrying on the business for the past 20 years and it is one of the market leaders in its field.
- (2) M/s. All Digital Network India ( 'Respondent/Corporate Debtor') was incorporated on 18.12.2012, under the Companies Act, 1956 with CIN: U74900KA2012PLC67320 having its registered office at B89, 5<sup>th</sup> Main Road, KSIDC Industrial Estate, Rajajinagar, Bengaluru – 560 095. The Nominal Share Capital of the Company is Rs.40,00,00,000/- and paid-up share capital INR 38,03,83,488/-.
- (3) The Corporate Debtor approached the Operational Creditor in January 2013 for purchasing TV equipment and accessories from the Operational Creditor. Accordingly, the Operational Creditor began supplying TV equipment and accessories to the Corporate Debtor from 19.03.2013, and issue invoices for the respective amounts to the corporate Debtor whenever orders were placed. A ledger account was also maintained for the same by the Operational Creditor. Further keeping in view the custom and trade practices, the Corporate Debtor always given a credit period of 30 to 45 days to clear all outstanding dues. The Operational Creditor was relatively prompt in payments for all previous invoices till August 2016.
- (4) It is stated that a mere perusal of the ledger account would reflect that the Corporate Debtor was not regular in making



payments of the legally due debt to the Operational Creditor after the issuance of each invoices, but on the contrary would only make part payments from time to time. When the representatives of the Operational Creditor contacted the Corporate Debtor and requested the balance payment be made immediately, they were constantly bombarded with various excuses and pleas. Hence in the interest of maintaining a good working relationship with the Corporate Debtor, the Operational Credit continued to supply TV accessories to the Corporate Debtor over the next three years.

(5) While the Operational Creditor continued to supply the accessories albeit at a lesser quantity than previously, it soon became apparent when the Operational Creditor issued a final invoice dated 30.01.2017. The Operational Creditor clearly mentioned in the same invoice that there was an already outstanding debt of Rs. 6,58,622.85/- in addition to an amount of Rs. 20,493.38/- which was raised in the final invoice dated 30.01.2017 totally amount to INR 6,79,116.23/-. Ultimately, the Operational Creditor issued a Statutory Demand notice to the Corporate Debtor, under the Code, through RPAD on 31.03.2019. However, the Corporate Debtor failed to pay the outstanding. Hence the petition.

3. The Corporate Debtor/Respondent filed its Statement of objections dated 13.07.2020 , by interalia contending as follows:

(1) It is stated that the Corporate Debtor was undergoing severe financial losses, the representatives of the Corporate Debtor met with the representatives of the Operational Creditor and after a long and fruitful discussion, the Operational Creditor allowed the Corporate Debtor to make payment in respect of the invoices raised by the Operational Creditor, as and when the fund available and



it continued uninterruptedly with payments made periodically. However, much to the utter shock and dismay of the Corporate Debtor, a "final invoice dated 30.01.2017 was received from the Operational Creditor. The representatives of the Corporate Debtor immediately met the Operational Creditor informing them that the business of the Corporate Debtor is almost come to a standstill and any dues pending would not be honoured by the Corporate Debtor due to a complete paucity of fund. The Corporate Debtor further communicated that the prospects of the Corporate Debtor securing new business was highly bleak, and since amount due was a small amount, the same may be waived off at the behest of the Operational Creditor and the representatives of the Operational Creditor informed that they would get back to the Corporate Debtor after due deliberation.

(2) The Operational Creditor then orally agreed to waive off all dues to be paid by the Corporate Debtor after due deliberation, as result, the Operational Creditor and the Corporate Debtor ceased their business relationship as all business operations of the Corporate Debtor is ceased as well. The Corporate Debtor was orally was informed that remaining debt of Rs. 6,79,116.23/- had been waived off. When the matter stood thus, the Corporate Debtor was extremely shocked and surprised to receive notice of the present proceedings, contrary to their assurance that they would not initiate any proceedings. Therefore, they have urged the Adjudicating Authority to dismiss the instant Petition.

4. Heard Mr. SharanjithShetty.K, learned Counsel for the Petitioner, and Mr. Siddarth Suman, Learned Counsel for the Respondent

**through Video Conference.** We have carefully perused the pleadings of both the Parties and the extant provisions of the Code and the Rules made thereunder.

5. The main points for considerations are whether debt and default in question is prima facie proved or not to initiate CIRP especially in view of cause of action stated to have arise from the year 2013 and the Petitioner stated to have waived the outstanding amount.
6. The Demand Notice under the provisions of Code was issued only 31.03.2019. The above averments of the Petitioner in the demand notice clearly shows that the cause of action arises right from the year 2013, and the final invoice was issued on 30.01.2017 bearing 23203 only for Rs. 20,493.38/- However, it is mentioned in the demand notice there is already outstanding amount of Rs. 6,58,622.85. The Petitioner has no details on what invoices the said amount is outstanding. Through the Demand notice, the Petitioner called upon the Respondent to pay the outstanding amount within 10 days from the date of the receipt of the notice, failing which shall initiate CIRP in respect of the Respondent, the Petitioner, for the reasons best known to it, has filed the instant company petition only on 30.01.2020, that too without explaining the reasons for delay. Therefore, the Petitioner invoked the provisions of the Code on misconceived facts and law. The Petitioner has accepted that the Respondent was prompt in payment till 2016. The delay in issuing demand notice and filing the instant Petition, after long lapse of time, gives credence to the contention of Respondent that the Petitioner has waived the outstanding amount. As stated supra, basing on waiving of outstanding amount, the business relationship with the Petitioner closed and the operations of Corporate Debtor too closed. The present Company petition is filed with an intention to recover the alleged time barred debt, which is not permissible under law. It is a settled principle of law that the provisions of Code cannot

be invoked for recovery of outstanding amount, but it can be invoked to initiate CIRP for justified reasons as per object of the Code. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*, has inter alia, held that IBC, 2016 is not intended to be substitute to a recovery forum.

7. For the aforesaid reasons and circumstances of the case, and the Law on the issue, we are of considered opinion that the instant Company Petition is not fit case to admit, and it is liable to be rejected.
8. In the result, **C.P. (IB) No.148/BB/2020** is hereby rejected. No order as to costs.

**(ASHUTOSH CHANDRA)**  
**MEMBER, TECHNICAL**

**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**