



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

(IB)-398(ND)2021

IN THE MATTER OF:

M/S. TECHNICA ENGINEERS

2507, 1st Floor, Sector-7-A,

Faridabad, Haryana - 121006

...Applicant/Operational Creditor

VERSUS

M/S. DHINGRA JARDINE INFRASTRUCTURE PRIVATE LIMITED

71, Chitra Gupta Road,

Paharganj, South Delhi

New Delhi-110025

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on : 20.09.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SH. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Dushyant Yadav

For the Respondent : None

(IB)-398/(ND)/2021

Technica Engineers Vs. Dhingra Jardine Infrastructure Pvt. Ltd.



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 by M/s. Technica Engineers (for brevity, the '**Applicant/ Operational Creditor**') with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Dhingra Jardine Infrastructure Private Limited (for brevity the '**Respondent**').

2. That the Respondent namely, M/s. Dhingra Jardine Infrastructure Private Limited is a Company incorporated on 13.03.2006 with CIN U45201DL2006PTC147404 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 71, Chitra Gupta Road, Paharganj, South Delhi, New Delhi-110025, which is within the jurisdiction of this Tribunal. That the Authorized Share Capital of the Respondent is Rs. 20,00,00,000/- and Paid-up Share Capital is Rs. 14,00,00,000/- as per the Master Data.

3. It is stated by the Applicant that the Respondent had issued various work orders/General Conditions Contracts with it for construction works at California Country Project at Sector 80, Village Barauli, Faridabad, Haryana. It is added the Applicant had worked at these sites till 2018.



4. It is stated by the Applicant that it had raised invoices on the Respondent out of which the invoices pertaining to the period from 10.02.2012 to 28.12.2017 are remaining unpaid. The details these invoices are given in the Application. The detailed particulars of the Operational Debt claimed are mentioned in Part IV of the application, which is reproduced below :

Part - IV

PARITCULARS OF OPERATIONAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE.	As on date the total default amount is Rs. Rs.2,61,33,770/- (Rupees Two Crore Sixty One Lakh Thirty Three Thousand Seven Hundred Seventy Two Only) along with interest @ 24% per annum of
		Rs.1,88,16,314/- (One Crore Eighty Eight Lakh Sixteen Thousand Three hundred Fourteen Only) a total outstanding including interest Rupees 4,49,50,084.40(Four crore Forty Nine Lakh Fifty Thousand and Eighty Four and Forty paisa only)
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	A fact sheet/ ledger account has been attached along with the present application, enumerating the facts in relation to the debt incurred by the Corporate Debtor. The same may be read as a part and parcel of the present application.



5. That from the perusal of the Part IV of the Application, it is observed that the Applicant has claimed the total outstanding amount of Rs. 2,61,33,770/- along with interest @ 24% interest.

6. It is stated by the Applicant that since the Respondent did not make the due payment of its operational debt, it had issued a Demand Notice dated 17.12.2020 under Section 8 of IBC, 2016 at the registered office of the Respondent vide speed post which was delivered to the Respondent on 28.12.2020. The Tracking Report of the delivery has been placed on record. The Applicant has filed the Affidavit under Section 9(3)(b) of IBC, 2016 stating that no notice of dispute has been received by it. Basing on the aforesaid facts, the Applicant has prayed for initiation of CIRP against the Respondent.

7. Despite notice and opportunities, the Respondent failed to file its reply. Accordingly, its right to file reply was closed vide order dated 20.07.2022 of this Adjudicating Authority.

8. We have heard the Ld. Counsel for the Applicant and perused the documents placed on record. Since the invoices claimed relate to the period from 10.02.2012 to 28.12.2017, therefore, we would like to examine whether the present application being filed on 03.02.2021 is within the limitation ?

9. At this juncture, we refer to the ledger account of the Respondent maintained and annexed by the Applicant giving details of the part payment received and the invoices.



TECHNICA ENGINEERS
DHINGRA JAIDINE INFRASTRUCTURE
 Ledger Account

1-Apr-2011 to 28-Dec-2017

Date	Particulars	Vch Type	Vch No.	Debit	Credit
01/11/2011	Dr STATE BANK OF INDIA	Receipt	1		285100.00
17/01/2012	Dr STATE BANK OF INDIA	Receipt	2		1000000.00
10/02/2012	Cr SERVICE SALES	Sales	1	2037465.68	
10/02/2012	Dr TDS RECEIVABLE	Journal	1		19705.65
15/02/2012	Dr STATE BANK OF INDIA	Receipt	3		600000.00
27/05/2012	Cr SERVICE SALES	Sales	1	1360679.00	
27/05/2012	Dr TDS RECEIVABLE	Journal	1		12965.77
16/07/2012	Dr STATE BANK OF INDIA	Receipt	1		700000.00
22/10/2012	Dr STATE BANK OF INDIA	Receipt	2		400000.00
07/11/2012	Cr SERVICE SALES	Sales	2	293301.00	
07/11/2012	Cr SERVICE SALES	Sales	3	1890406.00	
07/11/2012	Dr TDS RECEIVABLE	Journal	2		2794.83
07/11/2012	Dr TDS RECEIVABLE	Journal	3		18013.48
07/12/2012	Dr STATE BANK OF INDIA	Receipt	3		679705.00
14/12/2012	Dr STATE BANK OF INDIA	Receipt	4		679705.00
24/12/2012	Dr STATE BANK OF INDIA	Receipt	5		679704.00
02/03/2014	Cr SERVICE SALES	Sales	1	2093073.00	
02/03/2014	Cr SERVICE SALES	Sales	2	1523864.44	
02/03/2014	Dr TDS RECEIVABLE	Journal	1		19944.67
02/03/2014	Dr TDS RECEIVABLE	Journal	2		14520.77
30/04/2014	Dr WCT RECEIVABLE	Journal	1		351781.00
10/05/2014	Dr STATE BANK OF INDIA	Receipt	1		500000.00
15/05/2014	Cr SERVICE SALES	Sales	1	899921.00	
15/05/2014	Dr TDS RECEIVABLE	Journal	2		8575.25
22/05/2014	Cr SERVICE SALES	Sales	2	956500.54	
22/05/2014	Dr TDS RECEIVABLE	Journal	3		9114.39
03/07/2014	Cr SERVICE SALES	Sales	3	986918.56	
03/07/2014	Dr TDS RECEIVABLE	Journal	4		9404.24
12/08/2014	Dr STATE BANK OF INDIA	Receipt	2		1000000.00
06/10/2014	Cr SERVICE SALES	Sales	4	1098627.25	
06/10/2014	Dr TDS RECEIVABLE	Journal	5		10468.70
22/10/2014	Dr STATE BANK OF INDIA	Receipt	3		1000000.00
07/02/2015	Cr SERVICE SALES	Sales	5	1407289.00	
07/02/2015	Dr TDS RECEIVABLE	Journal	6		13733.40
10/02/2015	Dr WCT RECEIVABLE	Journal	7		142243.00
14/02/2015	Dr STATE BANK OF INDIA	Receipt	4		1667250.00
28/02/2015	Dr STATE BANK OF INDIA	Receipt	5		1010264.00
20/03/2015	Cr SERVICE SALES	Sales	6	1373037.00	
20/03/2015	Dr TDS RECEIVABLE	Journal	8		13399.14
31/03/2015	Dr WCT RECEIVABLE	Journal	9		54961.00
31/03/2015	Dr WCT RECEIVABLE	Journal	10		72100.00
04/05/2015	Dr STATE BANK OF INDIA	Receipt	1		2000000.00
01/06/2015	Cr SERVICE SALES	Sales	1	3628800.00	
01/06/2015	Dr TDS RECEIVABLE	Journal	1		35299.63
01/06/2015	Dr WCT RECEIVABLE	Journal	2		70345.00

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08/06/2015	Dr	STATE BANK OF INDIA	Receipt	2		1000000.00
24/06/2015	Cr	SERVICE SALES	Sales	2	2022873.73	
24/06/2015	Dr	TDS RECEIVABLE	Journal	3		19677.76
25/06/2015	Dr	WCT RECEIVABLE	Journal	4		185323.00
25/06/2015	Dr	WCT RECEIVABLE	Journal	5		43575.00
29/06/2015	Dr	STATE BANK OF INDIA	Receipt	3		1500000.00
09/07/2015	Dr	STATE BANK OF INDIA	Receipt	4		778125.00
21/07/2015	Cr	SERVICE SALES	Sales	3	1026943.22	
21/07/2015	Dr	TDS RECEIVABLE	Journal	6		9989.72
21/07/2015	Dr	WCT RECEIVABLE	Journal	7		103307.00
27/07/2015	Dr	STATE BANK OF INDIA	Receipt	5		1500000.00
18/08/2015	Dr	STATE BANK OF INDIA	Receipt	6		2000000.00
01/09/2015	Cr	SERVICE SALES	Sales	4	1087687.00	
01/09/2015	Dr	TDS RECEIVABLE	Journal	8		10580.61
06/09/2015	Cr	SERVICE SALES	Sales	5	1067753.79	
06/09/2015	Dr	TDS RECEIVABLE	Journal	9		10386.71
08/09/2015	Cr	SERVICE SALES	Sales	6	289485.83	
08/09/2015	Dr	TDS RECEIVABLE	Journal	10		2816.01
10/09/2015	Dr	STATE BANK OF INDIA	Receipt	7		900000.00
21/09/2015	Dr	WCT RECEIVABLE	Journal	11		174686.00
11/10/2015	Cr	SERVICE SALES	Sales	7	2115709.32	
11/10/2015	Dr	TDS RECEIVABLE	Journal	12		20580.83
14/10/2015	Dr	STATE BANK OF INDIA	Receipt	8		1500000.00
28/10/2015	Cr	SERVICE SALES	Sales	8	1659820.00	
28/10/2015	Dr	TDS RECEIVABLE	Journal	13		16146.11
29/10/2015	Cr	SERVICE SALES	Sales	9	347926.60	
29/10/2015	Cr	SERVICE SALES	Sales	10	496195.00	
29/10/2015	Cr	SERVICE SALES	Sales	11	1850683.73	
29/10/2015	Dr	TDS RECEIVABLE	Journal	14		3384.50
29/10/2015	Dr	TDS RECEIVABLE	Journal	15		4826.80
29/10/2015	Dr	TDS RECEIVABLE	Journal	16		18002.76
03/11/2015	Dr	WCT RECEIVABLE	Journal	17		329128.00
07/11/2015	Dr	STATE BANK OF INDIA	Receipt	9		2000000.00
16/11/2015	Cr	SERVICE SALES	Sales	12	1666841.35	
16/11/2015	Dr	TDS RECEIVABLE	Journal	18		16214.41
11/12/2015	Dr	STATE BANK OF INDIA	Receipt	10		2000000.00
30/01/2016	Cr	SERVICE SALES	Sales	13	2805534.54	
30/01/2016	Cr	SERVICE SALES	Sales	14	96122.75	
30/01/2016	Dr	TDS RECEIVABLE	Journal	19		27264.67
30/01/2016	Dr	TDS RECEIVABLE	Journal	20		839.50
03/02/2016	Cr	SERVICE SALES	Sales	15	1192416.52	
03/02/2016	Dr	TDS RECEIVABLE	Journal	21		11588.11
09/02/2016	Cr	SERVICE SALES	Sales	16	378254.23	
09/02/2016	Dr	TDS RECEIVABLE	Journal	22		3675.94
09/02/2016	Dr	WCT RECEIVABLE	Journal	23		227526.00
16/02/2016	Dr	STATE BANK OF INDIA	Receipt	11		500000.00
17/02/2016	Cr	SERVICE SALES	Sales	17	733018.44	
17/02/2016	Cr	SERVICE SALES	Sales	18	230153.34	
17/02/2016	Dr	TDS RECEIVABLE	Journal	24		7123.60
17/02/2016	Dr	TDS RECEIVABLE	Journal	25		2236.67
25/02/2016	Dr	STATE BANK OF INDIA	Receipt	12		500000.00
01/03/2016	Dr	WCT RECEIVABLE	Journal	26		85126.00



03/03/2016	Dr	STATE BANK OF INDIA	Receipt	13		1000000.00
20/03/2016	Cr	SERVICE SALES	Sales	19	899104.18	
20/03/2016	Dr	TDS RECEIVABLE	Journal	27		8737.65
28/03/2016	Cr	SERVICE SALES	Sales	20	1258460.83	
28/03/2016	Dr	TDS RECEIVABLE	Journal	28		12229.94
29/03/2016	Cr	SERVICE SALES	Sales	21	1081831.00	
29/03/2016	Dr	TDS RECEIVABLE	Journal	29		10513.42
31/03/2016	Dr	WCT RECEIVABLE	Journal	30		94993.00
31/03/2016	Dr	WCT RECEIVABLE	Journal	31		64207.00
07/04/2016	Dr	STATE BANK OF INDIA	Receipt	1		1000000.00
27/04/2016	Dr	STATE BANK OF INDIA	Receipt	2		700000.00
28/04/2016	Cr	SERVICE SALES	Sales	1	3431764.40	
28/04/2016	Dr	TDS RECEIVABLE	Journal	1		33350.48
29/04/2016	Cr	SERVICE SALES	Sales	2	1451797.58	
29/04/2016	Dr	TDS RECEIVABLE	Journal	2		14108.82
05/05/2016	Dr	STATE BANK OF INDIA	Receipt	3		700000.00
09/05/2016	Dr	WCT RECEIVABLE	Journal	3		304357.00
19/05/2016	Dr	STATE BANK OF INDIA	Receipt	4		1000000.00
26/05/2016	Dr	STATE BANK OF INDIA	Receipt	5		250000.00
07/06/2016	Dr	STATE BANK OF INDIA	Receipt	6		500000.00
07/06/2016	Dr	STATE BANK OF INDIA	Receipt	7		1000000.00
01/07/2016	Cr	SERVICE SALES	Sales	3	1273101.63	
01/07/2016	Dr	TDS RECEIVABLE	Journal	4		12360.21
02/07/2016	Dr	STATE BANK OF INDIA	Receipt	8		1000000.00
14/07/2016	Cr	SERVICE SALES	Sales	4	2579800.00	
14/07/2016	Dr	TDS RECEIVABLE	Journal	5		25046.60
25/07/2016	Dr	STATE BANK OF INDIA	Receipt	9		1000000.00
02/08/2016	Cr	SERVICE SALES	Sales	5	596648.00	
02/08/2016	Cr	SERVICE SALES	Sales	6	787972.66	
02/08/2016	Dr	TDS RECEIVABLE	Journal	6		5792.70
02/08/2016	Dr	TDS RECEIVABLE	Journal	7		7650.22
05/08/2016	Dr	STATE BANK OF INDIA	Receipt	10		200000.00
29/08/2016	Dr	STATE BANK OF INDIA	Receipt	11		1000000.00
30/08/2016	Dr	STATE BANK OF INDIA	Receipt	12		200000.00
15/09/2016	Cr	SERVICE SALES	Sales	7	1109338.84	
15/09/2016	Dr	TDS RECEIVABLE	Journal	8		10770.28
10/10/2016	Cr	SERVICE SALES	Sales	8	3266750.00	
10/10/2016	Dr	TDS RECEIVABLE	Journal	9		31716.02
17/10/2016	Dr	STATE BANK OF INDIA	Receipt	13		927500.00
24/10/2016	Cr	SERVICE SALES	Sales	9	337672.00	
24/10/2016	Dr	TDS RECEIVABLE	Journal	10		3278.37
10/02/2017	Cr	SERVICE SALES	Sales	10	403181.00	
10/02/2017	Dr	TDS RECEIVABLE	Journal	11		3914.38
12/02/2017	Dr	TDS RECEIVABLE	Journal	12		88755.89
06/04/2017	Dr	STATE BANK OF INDIA	Receipt	1		500000.00
28/12/2017	Cr	SERVICE SALES	Sales	1	9341557.00	
					66436280.98	40302510.61
Dr Closing Balance						26133770.37
					66436280.98	66436280.98

Sdr



10. We further observe that the Applicant has also annexed with the application, the “Bank Statement” of State Bank of India from 01.10.2010 to 13.12.2017 to substantiate the part-payments received by it from the Respondent.

11. From perusal of the aforesaid running Ledger Account, we observe that the Respondent had made payments on various dates including on 17.01.2012, 12.08.2014 and 06.04.2017, which indicate that the Respondent had made at least one part-payment in every block of three years. Hence, in the instant case, although the invoices are running from 01.11.2011 to 28.12.2017, the period of limitation kept on extending by virtue of the part payments made by the Respondent. Even if we consider the period of limitation for the last invoice dated 28.12.2017, after which no part-payment is received, the limitation for that invoice expires on 27.12.2020.

12. Since the last part-payment was made on 06.04.2017 and the last invoice is dated 28.12.2017, therefore, the period of limitation gets extended till 05.04.2020 (for the previous invoices) and 28.12.2020 (for the last invoice) respectively. We are aware that vide Orders dated 23.03.2020 and 10.01.2022 in Suo Motu Writ Petition (C) No.3 of 2020, the Hon’ble Supreme Court has excluded the period from 15.03.2020 to 28.02.2022 for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Further, in this regard the Hon’ble NCLAT vide its order dated 10.01.2022, in the matter of **M/s.**



**Essjay Ericsson Private Limited vs. M/s. Frontline (NCR)
Business Solutions Pvt. Ltd. in Company Appeal (AT)
(Insolvency) No. 936 of 2021** has held that :

“12. When the Hon’ble Supreme Court in exercise of jurisdiction of Article 142 of the Constitution of India has directed for extension of period of limitation, a litigant is entitled for the benefit of extended period of limitation and if the petition, application, suit, appeal etc. are filed within extended period of limitation, the application, appeal, suit etc. shall be treated within period of limitation. When the Hon’ble Supreme Court has granted extension of period of limitation, it cannot be said that appeal, suit or application which is filed during the relevant period is barred by time so as requiring an Application under Section 5 of the Limitation Act, 1963 for condonation of delay. When the appeal, suit, application etc. is filed within period of limitation as extended by the Hon’ble Supreme Court, there does not arise any occasion to pray for condonation of delay for filing suit, application or appeal. However, if a litigant being over cautious files an Application under Section 5 of the Limitation Act, 1963, no exception can be taken to that proceeding but there is no requirement in law to file an application under Section 5 of the Limitation Act, 1963.

13. Further, when an application, appeal or suit etc. is filed within extended period of limitation as directed by the Hon’ble Supreme Court, as noted above, there is no discretion left with the Court or Tribunal to hold that application, appeal or suit is delayed when there is no requirement of filing application under Limitation Act. In above circumstances, discretion of Court to consider sufficient cause does not arise.”

(Emphasis Placed)

13. In view of the aforesaid position of law, we find that the present Application having been filed on 03.01.2021, is well within the limitation period.

14. The Respondent failed to file its Reply or give any cogent reason that as to why CIRP shall not be initiated against it.



15. In the given facts and circumstances, the Operational Creditor has established the default on the part of Respondent in payment of the operational debt. The Petition filed under Section 9 fulfills all the requirements of law. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms 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 Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitisation 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 Respondent.”

16. Since there is no IRP proposed by the Operational Creditor. Therefore, this Bench appoints Mr. Ajay Gupta having IBBI Registration No. IBBI/IPA-001/IP-P00140/2017-18/10304 and Email

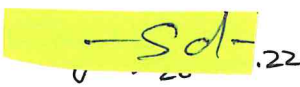


id <ajaygupta1969@gmail.com> from the list of panel of IPs recommended by IBBI to this Adjudicating Authority.

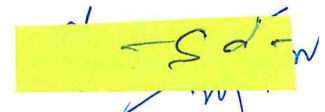
“Mr. Ajay Gupta (IBBI Registration No. IBBI/IPA-001/IP-P00140/2017-18/10304, E-mail: <ajaygupta1969@gmail.com> is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is directed to take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

17. 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.

18. A copy of this Order shall be communicated to the Operational Creditor, the Respondent and the IRP mentioned above, by the Court Officer/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to IBBI for their records.



(L. N. GUPTA)
MEMBER (T)



(DHARMINDER SINGH)
MEMBER (J)