

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - 5

M.A. No. 1196/2021

IN

C.P. No.1069/I&BP/NCLT/MAH/2020

In the matter of

Dinesh Gupta

.....Applicant/Petitioner

Vs

Rolta India Limited

..... Corporate Debtor

Order delivered on: 06.08.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Shri. Chandra Bhan Singh, Member (T)

For the Applicant: Mr. Prateek Seksaria, Advocate.

For the IRP: Ms. Ranjana Roy Gawai, Mr. Pervinder, Mr. Vineet Kumar,
Advocates a/w Ms. Vandana Garg, IRP.

For the Financial Creditor: Mr. Rohit Gupta, Mr. Nausher Kohli, Advocates.

For the Operational Creditor: Mr. Udaya Sankar Samudrala, Ms. Sandhya
Shukla, Advocates i/b Rajdeep Samudrala.

Per: Chandra Bhan Singh, Member (T)

ORDER

1. This is an Application filed by the Mr. Dinesh Gupta, the Operational Creditor who initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, for withdrawal of the Company Petition No. 1069 of 2020, admitted u/s 9 of the Code by an order of this Bench dated 13.05.2021.

2. The Applicant is approaching this Bench on its own to seek withdrawal of the Company Petition as the Insolvency Resolution professional (IRP) has delayed filing of the application under Section 12A of the Code.

Submissions by the Applicant:

3. The Applicant was an employee of the Corporate Debtor from 01.04.2013. the Applicant was relieved from the services of the Corporate Debtor on 14.06.2019 without settlement of arrears of salary and other dues. Therefore, Applicants / Operational Creditor/ Petitioner along with various other ex-employees filed the Petitions u/s 9 of the Insolvency and Bankruptcy Code, 2016 (Code) before this Hon'ble Tribunal. This Bench while hearing the Petitions took up one Petition in respect of each Rolta Group Company for hearing and heard both the parties extensively on 16.04.2021 and reserved for Orders.

4. This Bench proceeded to pass order dated 13.05.2021 admitting the present petition under Section 9 of the Code, initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and appointed Ms. Vandana Garg as IRP of the Corporate Debtor.

5. Thereafter, further negotiations took place between the parties and the Corporate Debtor through its promoter director Mr. Kamal Singh, on or about 25.05.2021, agreed to settle the dues and make payment of the settlement amount to all the Applicants / Operational Creditors, who had filed the Applications before this Bench. Thereafter, settlement agreements were duly signed between the parties on 25.05.2021.

6. On 25.05.2021, Ms. Vandana Garg, who has been appointed as the Interim Resolution Professional (IRP) by this Hon'ble Tribunal took charge of the affairs of the Corporate Debtors.

7. The Applicants / Operational Creditors represented to the IRP that the Applicants entered into settlement and, therefore, requested the IRP to file an Application u/s 12A of the Code. As the IRP did not file the Applications immediately, the Applicants / Operational Creditors preferred the Applications u/s 12A of the Code before this Hon'ble Tribunal.

8. The promoter director Mr. Kamal Singh has also filed an Affidavit before this Tribunal confirming the execution of Settlement Deeds with the Applicants / Operational Creditors whose Petitions are pending before this Tribunal.

9. In the meanwhile, withdrawal of the Applications u/s 12A is vehemently opposed by the Financial Creditors and some of the ex-employees who have not filed any Petition before this Tribunal.

10. It is submitted that the Financial Creditors and the ex-employees who have not filed any Petitions before this Bench cannot oppose any settlement that is arrived at between the Applicants / Operational Creditors and the promote director. It is further submitted that the Financial Creditors have already filed their Petitions before this Bench which are still pending and necessary adjudication should take place in its own course. The ex-employees who have not filed any Petition before this Hon'ble Bench have no say to intervene in the present Applications as they have yet to file their Petitions before this Tribunal.

11. It is further submitted by the Applicant that the Financial Creditors have valuable assets of the Corporate Debtor duly charged to them and they can recover their dues by resorting to SARFAESI Act, 2002 or any other provisions.

12. The legislature, in its wisdom, amended the provisions of the Code in the year 2018 and incorporated the provision of Section 12A in the Code whereby the adjudicating authority may allow withdrawal of the Applications admitted u/s 7, 9 and 10 of the Code. In the present case, even the Committee of Creditors is also not formed and as such the approval of 90% voting share of the Committee of Creditors is also not required. Therefore, this Bench has to exercise its jurisdiction and allow withdrawal of the Applications filed by the Applicants / Operational Creditors u/s 12A of the Code.

13. It is submitted by the Applicant that the Financial Creditors and the ex-employees who have not yet filed their Petitions have their own course to recover the dues payable to them by the Corporate Debtor.

14. The Applicant mentions that the Hon'ble NCLAT in its Order dated 07.07.2021 in the matter of Anuj Tejpal v/s Rakesh Yadav & Oyo Hotels and Homes Pvt. Ltd. permitted the withdrawal of the Company Petitions which were admitted by the Hon'ble NCLT. Therefore, the ratio of the said judgement has to be followed by this Tribunal.

Submissions by the Promoter:

15. The present Applications have been filed by the Applicants seeking withdrawal in terms of Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the respective Company Petitions, admitted by this Bench vide Orders dated 13.05.2021 against Rolta India Limited.

16. Prior to the communication of the Admission Order, a Joint Settlement Agreement was executed on behalf of 24 employees who had filed respective applications under Section 9 of the Code. Under the Joint Settlement Agreement dated 27.05.2021, entered into between 24

employees and the Promoter of the Corporate Debtor, the parties had amicably settled and agreed to withdraw their respective applications before this Bench.

17. Pursuant to the direction of this Tribunal vide Order dated 10.06.2021, and in the spirit of arriving at a settlement with all employees (who have filed respective applications under Section 9 of the Code on or before 10.06.2021), the Promoter has entered into full and final settlement with 77 additional employees vide Joint Settlement Agreement dated 10.06.2021, Joint Settlement Agreement dated 23.06.2021 and Settlement Agreement dated 24.06.2021. Some of the Settlement Agreements have also been partly implemented by the Promoter making payment of a sum of Rs. 50,000/- to the employees. The Corporate Debtor, Promoter and 101 employees have all altered their position. The said Settlement Agreements are legally enforceable by the parties thereto and are a novatio to the earlier employment contracts and any amounts which are payable there under. It is also submitted that upon such settlement agreements being executed and having been partly implemented, the original cause of action as a default of an operational debt has stood obliterated and consequently, the cause of action for a proceeding under section 9 of IBC has also ipso facto and ipso jure stood obliterated. It is submitted that insofar as the employee petitions which are at pre-admission stage, the question of any cause of action surviving in relation thereto does no arise. In any event, in relation to such petitions which are at pre-admission stage, neither Section 12A nor Regulation 30A applies and the same can never be considered as a proceeding in rem. There can never be an embargo in withdrawal of such petitions and no other person has any locus to be heard or oppose the same.

18. It is clarified by the Promoters that during the hearing held on 13.06.2021, it was incorrectly submitted that the Promoter has not settled with all employees whose Petitions were pending as on 10.06.2021. As per the list provided by the IRP, the Promoter has settled with all employees. For ease in reference, the list of such employees is provided hereinbelow:

| Sr. | CP No. | Employee Name | Settlement Agreement date |
|---------------------|-----------|--------------------------------|---|
| ROLTA INDIA LIMITED | | | |
| 1 | 1932/2019 | Hiten Valia | Joint Settlement Agreement dated 10.06.2021 |
| 2 | 1470/2020 | Deepak Gupta | Joint Settlement Agreement dated 10.06.2021 |
| 3 | 1466/2020 | Anjali Sagar Kavishwar | Joint Settlement Agreement dated 10.06.2021 |
| 4 | 38/2021 | Sameer Anilkumar Lawande | Joint Settlement Agreement dated 10.06.2021 |
| 5 | 1371/2020 | Vipin Dayaram Yadav | Joint Settlement Agreement dated 10.06.2021 |
| 6 | 151/2021 | Jagdish A163/2021swath | Joint Settlement Agreement dated 10.06.2021 |
| 7 | 163/2021 | Mahesh Kumar Chalsani | Joint Settlement Agreement dated 10.06.2021 |
| 8 | 1069/2021 | Dinesh Gupta | Joint Settlement Agreement dated 10.06.2021 |
| 9 | 409/2021 | Laxmidhar Vinayakrao Gaopandey | Settlement Agreement dated 24.06.2021 |
| 10 | 297/2021 | Pradeep Kumar Sharma | Joint Settlement Agreement dated 10.06.2021 |
| 11 | 248/2021 | Pawan Kumar | Joint Settlement Agreement dated 27.05.2021 |
| 12 | 1372/2020 | Biswa Ranjan Das | Joint Settlement Agreement dated 27.05.2021 |
| 13 | 1354/2020 | Animesh Pandit | Joint Settlement Agreement dated 27.05.2021 |
| 14 | 126/2020 | Ganesh Kumar | Joint Settlement Agreement dated 10.06.2021 |
| 15 | 1326/2020 | Devang Ashar | Joint Settlement Agreement dated 27.05.2021 |
| 16 | 121/2020 | Suresh Anthoti | Joint Settlement Agreement dated 10.06.2021 |
| 17 | 1112/2020 | Sanjay Jat | Joint Settlement Agreement dated 10.06.2021 |
| 18 | 195/2021 | Shrikant Vasudeo Samralkar | Joint Settlement Agreement dated 10.06.2021 |
| 19 | 566/2021 | Anant Sadekar | Joint Settlement Agreement dated 23.06.2021 |
| 20 | | Vinay Gaidhani | Joint Settlement Agreement dated 23.06.2021 |
| 21 | | Rajendra Inani | Joint Settlement Agreement |

| | | | |
|----|----------|--------------------|---|
| | | | dated 23.06.2021 |
| 22 | | Kumarasamy Ramaiah | Joint Settlement Agreement dated 23.06.2021 |
| 23 | | Sunil K Jain | Joint Settlement Agreement dated 23.06.2021 |
| 24 | | Makrand Palkar | Joint Settlement Agreement dated 23.06.2021 |
| 25 | | Sanjay Jagasia | Joint Settlement Agreement dated 23.06.2021 |
| 26 | | Rahul Karanjawala | Joint Settlement Agreement dated 23.06.2021 |
| 27 | | Samir Cahadgaonkar | Joint Settlement Agreement dated 23.06.2021 |
| 28 | | Rakesh Plaha | Joint Settlement Agreement dated 23.06.2021 |
| 29 | 343/2021 | Trupti Pol | Joint Settlement Agreement dated 10.06.2021 |
| 30 | 294/2021 | Sandip Lad | Joint Settlement Agreement dated 10.06.2021 |
| 31 | 453/2021 | Mahesh Jha | Joint Settlement Agreement dated 10.06.2021 |
| 32 | 537/2021 | Naresh Sawant | Joint Settlement Agreement dated 10.06.2021 |

Thus, in total, 32 employees who have filed application under Section 9 of the Code as on 27.05.2021, 10.06.2021 and 23.06.2021, have been settled. These employees have also filed their withdrawal memos.

19. The Applicants herein had approached the IRP for filing the application in FORM FA under Reg. 30A(1)(a) to seek withdrawal of the admitted Company Petitions. However, for various reasons, the IRP did not cooperate with the Applicants and thus the Applicants were constrained to file the present applications on their own motion under Rule 11 of the said Rules seeking withdrawal of the admitted Company Petitions.

20. Prior to the amendment of Regulation of 30A, the Hon'ble Supreme Court in the matter of Swiss Ribbons vs Union of India [(2019) 4 SCC 17], (Para 82 /Page 86) has recognised the right of an applicant to approach the Adjudicating Authority under Rule 11 of the said Rules and seek withdrawal prior to constitution of the COC. This obviously can have no

other meaning than the right of an Applicant to apply for withdrawal without the consent of the creditors (Section 12A condition).

21. Concomitantly, Section 12A now read with the amended Reg. 30A in its current form envisages the withdrawal mechanism to be adopted in Pre-COC and Post-COC scenarios. Reg 30A(1) as amended is reproduced hereinbelow for reference:

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

- (a) before the constitution of the committee, by the applicant through the interim resolution professional;
- (b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be: Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

22. The legislative intent behind amendment of Regulation 30A would clearly show that at a pre COC stage, the right of an Applicant to seek withdrawal is not subject to any consent or approval or the collective wisdom of the other creditors. The same is only triggered once a COC is constituted along with the respective voting rights being ascertained. It is further submitted that at the time of considering an application which is at a pre COC stage, neither the claim nor any rights of any creditor are prejudiced inasmuch as their independent right to pursue their claims and seek initiation of CIRP proceedings is kept intact.

23. "The Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. vs. Union of India has categorically held that at any stage where the CoC

is not yet constituted, a party can approach NCLT directly, the Tribunal may in exercise of the inherent powers under Rule 11 of NCLT Rules may allow or disallow an application for withdrawal of CIRP. The claim and rights of other creditors as it stands is not prejudiced/alterd by the withdrawal of CIRP of Corporate Debtor.”

24. This has been affirmed by this Tribunal in the case of
- ISGEC Heavy Engineering Limited V/s Cane Agro Energy (India) Limited (Para iii/ Page 127)
 - Haresh Enterprises v. Mohota Industries Limited (Para 9.1/Page 176)

25. And Hon’ble Appellate Tribunal in the case of
- Hon’ble Tribunal in the recent judgment of Anuj Tejpal vs Rakesh Yadav – (Para 41, Page 167) (“OYO Hotels Case”).
 - Mr. K.C. Sanjeev vs. Mr. Easwara Pillai Kesavan Nair (Para 5/Page 181).

26. It is further submitted that the promoter has adhered with the directions of this Tribunal and has settled with 32 employees. If interventions of third parties are allowed at this stage, the settlement with 32 employees will be jeopardized. In the event the withdrawal is allowed, 32 employee petitions will stand to be withdrawn in light of the settlement arrived at.

Submissions by the IRP:

27. The Applicant has received the following Claims/intimation of Claims till the filing of the written Submissions in the Corporate Debtors viz. Rolta India Ltd.

| Sr. No. | Particulars (Rs. In crores) | Rolta India Limited | |
|------------|-----------------------------|---------------------|--------|
| | | No. of claims | Amount |

| | | | |
|---|-----------------------|---------------|----------------|
| 1 | Financial Creditors | 5.00 | 5,434.74 |
| 2 | Operational Creditors | 15.00 | 2.66 |
| 3 | Workmen & Employees | 567.00 | 86.41 |
| | Total | 587.00 | 5523.81 |

28. It is further submitted by the IRP that the IBC Code or the judicial pronouncements by the Hon'ble Appellate Tribunal and Benches of this Tribunal do not discriminate on the basis of type of creditors when asking an ex-management to propose settlement with creditors in view of settlement with only the Petitioners.

29. Further, a bare perusal would show that there are about 600 employees in the three Corporate Debtors with total claims amounting to more than Rs. 100 crores. That the above is the factual position to bring on records the same is for perusal of this Tribunal.

30. That it may be mentioned here that only the three Petitions wherein admission orders dated 13.05.2021 have been passed for three Corporate Debtors are being withdrawn and remaining more than 70 Petitions are pending before various Benches are not being withdrawn despite settlement agreements with the operational creditors/employees. Further, there are no settlement agreements filed in Company Petitions filed by the following Financial Creditors and pending before the Hon'ble NCLT Mumbai Bench- 1:

- a. Union Bank of India V/s Rolta India Ltd C.P.(IB)530/MB/2020;
- b. Value Partners Greater China High Yield Income Fund & Anr V/s Rolta India Ltd C.P.(IB)- 4375/(MB)/2018

Without withdrawal of all the Company Petitions, the withdrawal in the three petitions would mean the multiplicity of litigation and readmission of the Corporate debtors to CIRP.

31. The IRP further mentions that at this juncture, it is pertinent to point out here that by a perusal of the joint settlement agreements dated 10.06.2021 and 24.06.2021 executed between the employees and the promoter of the Corporate Debtor, it is evident that the ex-management of the Corporate Debtor (Promoter) has agreed to pay to these petitioners the agreed amount, upon withdrawal of the petitions only and that too jointly and/or severally with the Corporate Debtor.

32. That such an arrangement is liable to be referred to as preferential payments made after the admission of the company petitions under IBC, contrary to the interests of the rest of the creditors and stakeholders of the Corporate Debtor. The relevant extracts of the joint settlement agreements executed by the promoter of the Corporate Debtor with the employees whose petitions are pending before this Hon'ble Tribunal under Section 9 of IBC are reproduced hereunder:

33. "Joint Settlement Agreement dated 10.06.2021

5. Upon the Adjudicating Authority approving (i) withdrawal of the Admitted Petitions under Interim Application No.1196 of 2021, Interim Application No. 1197 of 2021, Interim Application No. 1198 of 2021 and (ii) withdrawal memos for the remaining 51 operational creditors, Mr. Kamal Singh either himself or through the Corporate Debtors shall make payment towards the two tranches, in terms of the particulars specified under Schedule I either through hand-over of demand drafts or 3 direct transfer, as maybe mutually agreed between the parties. It is also agreed that on the withdrawal of the Admitted Petitions being allowed as mentioned above and withdrawal memos being filed by 51 Operational Creditors, the Operational Creditors would be paid as token on the same day a sum of

Rs.50,000/- by Mr. Kamal Singh, either through hand-over of demand drafts or direct transfer, as maybe mutually agreed between the parties.

Joint Settlement Agreement dated 24.06.2021

6. Upon the Adjudicating Authority approving (i) withdrawal of the Admitted Company Petition under Interim Application No. 1196 of 2021 and (ii) withdrawal of the captioned Company Petition, Mr. Kamal Singh Kishan jointly and/or severally along with the Corporate Debtor agree to make payments in two tranches, in terms of the particulars specified under Schedule 1 as follows:

- a. The first tranche of payment i.e., 15% of the Settlement Amount after deduction of applicable of income tax more specifically mentioned in Schedule 1 hereinunder, shall be paid on the date of the Adjudicating Authority approving the withdrawal of the Admitted Company Petition and the captioned Company Petition, by handing a demand draft pr bank transfer to that effect, issued in the name of the Operational Creditor, to their authorized representative;
- b. The second tranche payment i.e., 85% of the Settlement Amount after deduction of applicable income tax, more specifically mentioned in Schedule 1 hereinunder, shall be paid on or before 30th July 2021 by way of demand draft or bank transfer to that effect, issued in the name of the Operational Creditor, to their authorized representative."

34. That the above application is not maintainable in terms of Regulation 30A of the IBBI Insolvency Resolution Process of Corporate Persons Regulations (CIRP Regulations).

35. It is submitted by the IRP that the above Application has been claimed to be a withdrawal application in Form FA. It is pertinent to mention here that the Form FA has been provided under Regulation 30A CIRP Regulations. However, in terms of Regulation 30A(1), an Application under 12A has to be filed by the Applicant through Interim Resolution Process (IRP) for a settlement achieved before constitution of Committee of Creditors.

36. At this juncture it is pertinent to reproduce Regulation 30A for ready reference of this Hon'ble Tribunal:

Regulation 30A of the CIRP Regulations:

30 A. Withdrawal of application

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

.....

.....

(6) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for 5 the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the Corporate Debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.

37. The Hon'ble Supreme Court in the matter of Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. [(2019) 4 SCC 17] clearly directed that interest of all stakeholders have to be considered while accepting or disallowing an application for withdrawal.

38. That the Hon'ble Supreme Court has recently in the matter of Indus Biotech Pvt. Ltd. vs. Kotak India Venture (Offshore) Fund & Ors. (2021 SCC OnLine SC 268) has clearly observed that when a petition under is admitted/triggered it becomes a proceeding in rem and even the creditor who has triggered the process would also lose control of the proceedings as Corporate Insolvency Resolution Process is required to be considered through the mechanism provided under the IB Code.

39. In the case of Swiss Ribbons Private Limited vs. Union of India (2019) 4 SCC 17 and Pioneer Urban Land and Infrastructure Limited vs. Union of India & Ors. (W.P.(C) No.43/2019) relied on behalf of Kotak Venture, the entire scope and ambit of the IB Code was considered and the validity of the provisions were upheld.

40. The underlying principle, therefore, from all the above noted decisions is that the reference to the triggering of a petition under Section 7 of the IB Code to consider the same as a proceeding in rem, it is necessary that the Adjudicating Authority ought to have applied its mind, recorded a finding of default and admitted the petition. On admission, third party right is created in all the creditors of the corporate debtors and will have ergaomnes effect. The mere filing of the petition and its pendency before admission, therefore, cannot be construed as the triggering of a proceeding in rem. Hence, the admission of the petition for consideration of the Corporate Insolvency Resolution Process is the relevant stage which would decide the status and the nature of the pendency of the proceedings and the mere filing cannot be taken as the triggering of the insolvency process....."

41. That hence, it is evidently clear that the applicants have lost control of the proceedings and the proceedings now are a proceeding in rem. Therefore, the applicant today does not have an inherent right to seek

withdrawal before this Hon'ble Tribunal, without consideration of the all the claims and Petitions filed against the Corporate Debtors.

42. That the Hon'ble National Company Law Appellate Tribunal in the matter of Jai Kishan Gupta vs. Green Edge Buildtech LLP &Ors. (2019 SCC OnLine NCLAT 916) did not accept the plea of an Appellant and did not intervene in the order passed by the Hon'ble NCLT whereby the notice was issued on objections raised by the Creditors and the application to withdraw on settlement was not allowed in view of the Claims received by the IRP and further directed the settlement to be considered by the COC (which was constituted in the meanwhile).

43. That in a similar situation the Hon'ble NCLT Principal Bench did Ranjeet Ramakrishna Yadav vs. JNC Construction Pvt. Ltd. [C.P.(IB) No. 272(PB)/2019] vide its order dated ...07.2018, directed the Applicant and the Ex-management to propose a plan to settle all the claims received by IRP.

44. Not only the Hon'ble Supreme Court, NCLAT and NCLAT but also the bankruptcy law committee report 2018 which brought about changes in Section 12A, categorically discouraged settlement with individual Creditors. The Relevant Part is being reproduced:

"...Para 29: it was agreed that once the CIRP is initiated, it is no longer a proceeding only between the applicant creditor and the corporate debtor but is envisaged to be a proceeding involving all creditors of the debtor. The 9 intent of the Code is to discourage individual actions for enforcement and settlement to the exclusion of the general benefit of all creditors. ..."

Submissions by the Financial Creditor/Intervenor:

45. The Financial Creditors are filing these submissions to intervene and oppose the withdrawal U/s 12A of the IBC, 2016 of the CIRP initiated against Rolta India Ltd.

46. The Financial Creditors are a consortium of Public Sector Banks comprising of Union Bank of India (Lead Bank), Bank of India, Central Bank of India, Bank of Baroda and Canara Bank. The details of the claims of these Financial Creditors against Rolta India Ltd. are as follows:

CLAIM OF FINANCIAL CREDITORS AGAINST ROLTA INDIA LTD.

| NAME OF BANK | CLAIM AMOUNT (IN RUPEES) |
|---------------------------------|--------------------------|
| UNION BANK OF INDIA (LEAD BANK) | 17,567,071,355.56 |
| BANK OF INDIA | 9,792,017,355.24 |
| CENTRAL BANK OF INDIA | 12,052,738,033.00 |
| BANK OF BARODA | 10,969,142,702.53 |
| CANARA BANK | 3,966,441,261.00 |
| TOTAL (RS.) | 54,347,410,707.33 |
| TOTAL (IN CRORES) | 5,434.74 |

47. The financial debt owed to the Financial Creditors is substantial. Considering the nature of the Financial Creditors i.e. that they are public sector lenders, enormous public interest and public monies are involved in the present matter.

48. It is submitted that the present case is not a fit case for this Tribunal to exercise its discretion under Section 12A of Insolvency and Bankruptcy Code, 2016. The present case is a fit case for this Tribunal to

exercise its discretion in rejecting the present application under Section 12A.

49. In support of the aforesaid submission, the Financial Creditors rely upon the following judgments in respect of the scope and ambit of Section 12A:

- a. Swiss Ribbons V. Union of India, (2019) 4 SCC 17
- b. Indus Biotech V. Kotak India, 2021 SCC Online SC 268
- c. Jai Kishan Gupta vs. Green Edge Buildtech LLP, Company Appeal (AT) (Ins) No. 969-970 of 2019
- d. CFM Assets Reconstruction Pvt. Ltd. vs. Vishram Narayan Panchpor, IA 1198/MB in CP 3049/2019
- e. Ranjeet Ramakrishna Yadav Vs. JNC Construction Pvt. Ltd., [CP(IB)No. 272(PB)/2019]

50. The aforesaid decisions of the Hon'ble Supreme Court and the Hon'ble NCLAT clearly demonstrate that even in the event the original creditor and corporate debtor settle their disputes prior to constitution of the COC, this Hon'ble Tribunal still has sufficient jurisdiction to reject an application under Section 12A of the IBC if the facts and circumstances of the case before it warrant such rejection.

51. As opposed to the aforesaid decisions, during the course of oral arguments on this Application, the erstwhile management of the Corporate Debtor placed reliance on the Judgment of the Hon'ble NCLAT in the matter of *Anuj Tejpal Vs. Rakesh Yadav and Oyo Hotels and Homes Private Limited, IA No. 815 of 2021 in Company Appeal (AT) Insolvency No. 298 of 2021* where the Ld. NCLAT. In the Financial Creditors' respectful submission, the said judgment is clearly distinguishable in the facts of its case. In this decision, the NCLAT permitted the said withdrawal **only** on the basis that there were claims lodged only by Operational

Creditors and **not** Financial Creditors. This is evident from the following paragraph of the NCLAT's decision:

"42. It is relevant to note that in the list of claims, totalling to 113, filed by the IRP, 110 are Operational Creditors. The claims of two Financial Creditors have been rejected."

52. It is submitted by the Financial Creditors that the Hon'ble NCLAT placed emphasis (*in bold*) on the aforesaid paragraph whilst passing the decision. As opposed to the aforesaid decision, in the present case, not only are there several Financial Creditors who have lodged their claims, there are Financial Creditors who are owed a debt in excess of Rs.8,000 Crores. This by itself would be a sufficient ground to disallow the present application for withdrawal under Section 12A.

53. It is further submitted that in view of there being a large outstanding financial debt of Rs.8,493.22 crores payable by the Corporate Debtors herein to the Financial Creditors, this is a fit case for this Hon'ble Tribunal to not exercise its discretion under Section 12A of IBC, 2016. It is further submitted that the financial debt owed to these Financial Creditors being a consortium of public sector banks is public money which fact needs to be taken into consideration before CIRP initiated against these Corporate Debtors is permitted to be withdrawn under Section 12A of IBC, 2016.

54. It is further submitted that the Corporate Debtor herein apart from having several petitions filed and against it under Section 7 and Section 9 of the IBC, 2016 before this Hon'ble Tribunal, this Corporate Debtor has once previously already been admitted into the CIRP by way of an order dt. 22nd October dt. 22.10.2019 of this Hon'ble Tribunal admitting a CP (IB) No. 4375/ NCLT/ MB/ 2018 which order was subsequently nullified by

the Bombay High Court by its order dt. 29.11.2019 in Writ Petition (L) No. 3280 of 2019.

55. It is also submitted that the Corporate Debtor is a habitual defaulter who has defaulted on repayment of its financial obligations to its employees and Financial Creditors. The Corporate Debtor ought to be admitted into CIRP forthwith and no indulgence ought to be granted to the Corporate Debtor and/or its ex-management / promoters. The IBC does not contemplate a misuse of the provisions of 12A by constantly admitting petitions, enjoying the moratorium and thereafter settling the same.

56. In conclusion, it is submitted that allowing the Withdrawal of CIRP proceedings initiated against Rolta India Ltd. will not serve any useful purpose in as much as the same will only result in contributing towards multiplicity of proceedings against these Corporate Debtors before this Hon'ble Tribunal which must necessarily be avoided.

57. The constant argument of the erstwhile management / promoters of the Corporate Debtor that the Financial Creditors can institute their own proceedings and are therefore not prejudiced by this settlement is not an argument acceptable in law and is merely an argument of convenience.

58. It is settled law that a judicial authority ought not to pass orders which would aid and/or further multiplicity of proceedings. In the present case, considering that over 75 nos. of Petitions under Sections 7 and 9 of the IBC are already pending against the Corporate Debtors, allowing the present withdrawal will evidently result in multiplicity of proceedings which ought to be avoided by this Tribunal.

59. In the present case, the ex-management / promoters of the Corporate Debtors have tried to argue that in view of the purported settlement with employees, this withdrawal should be permitted. In the Financial Creditors' respectful submission, firstly, all the dues of all the employees of the Corporate Debtors are not being settled. As submitted by the Resolution Professional, 177 no. of employees have lodged their claims against the Corporate Debtors and only some employees are being settled by the ex-management / promoters of the Corporate Debtors. Therefore, *ex-facie*, the purported settlement does not appear to be *bona fide*. Secondly and in any event, sympathy cannot over-ride law. Be that as it may, the interests of the employees would in any event be taken into consideration during the CIRP of the Corporate Debtors and they being Operational Creditors, will be entitled to their rights as provided for under the IBC. Considering the scheme of the Code and considering that CIRP proceedings are proceedings in *rem*, substantial claims of Financial Creditors cannot be disregarded and/or ignored in view of the purported settlement of certain employees of the Corporate Debtors.

Findings:

60. The present application IA 1196/2021 in CP 1069/2020 has been filed u/s 12-A of the IBC read with Rule 11 of the NCLT Rules, 2016 by Mr. Dinesh Gupta, an employee of the Corporate Debtor Company in the capacity of Operational Creditor seeking withdrawal of the present company Petition in terms of Regulation 30(A) of the IBC. The present Company Petition was "Admitted" vide Order dated 13.05.2021 of this Bench, thereby initiating CIRP against the Corporate Debtor and appointing Ms Vandana Garg as IRP of the Corporate Debtor. The Applicant mentions that he had approached the IRP for filing the Application in Form FA under Regulation 30(A)(1)(a) to seek withdrawal of the Admitted Company Petition. However, he says that the IRP did not co-operate and, therefore, the Applicant is compelled to file the present

Application on their own motion under rule 11 of the NCLT Rules seeking withdrawal of the Admitted Company Petition. The bench notes that in this case written submissions have been filed by the IRP. Written submissions have also been filed by the Intervenor who are basically Financial Creditors viz. Union Bank of India, Bank of India, Central Bank of India, Bank of Baroda, Canara Bank, for a total amount of about Rs. 5,434.74/- crores.

61. The IRP mentions that she has received claims/ intimation of claims of about Rs. **5523.81/-** crores from Financial Creditors, Operational Creditors and Workmen and Employees of Rolta India Limited. The details of these claims are as under:-

| Sr. No. | Particulars (Rs. In crores) | Rolta India Limited | |
|---------|-----------------------------|---------------------|----------------|
| | | No. of claims | Amount |
| 1 | Financial Creditors | 5.00 | 5,434.74 |
| 2 | Operational Creditors | 15.00 | 2.66 |
| 3 | Workmen & Employees | 567.00 | 86.41 |
| | Total | 587.00 | 5523.81 |

The Bench also notes that even under Workmen and Employees' claim there are 567 employees whose claims have been collated by the IRP. However, in the written submissions by the Promoter, the Joint Settlement Agreement executed by the Promoter on behalf of the Corporate Debtor Company is only with the 32 employees of Rolta India Limited.

62. As per the information provided by the IRP, the Bench notes that the total claim amount pertaining to the 567 employees of Rolta India translates into about Rs. 86.41/- crores. Therefore, Bench notes that even

the settlement which has been proposed by the Promoter on the behalf of the Corporate Debtor Company keeps aside the majority of the Workmen Employees' claim which has been brought out by the IRP. The Bench also notes that the proposed settlement with the employees under the Joint Settlement Agreement will be done only after they withdraw the Petition.

63. Interestingly enough, it is the Corporate Debtor is willing to pay the major part of the dues to the employees only subsequent to withdrawal of Petition through the settlement jointly and/ or severally with the Employees. The Bench feels that this provides an escape route to both the promoter as well as to the Corporate Debtor Company to conveniently wriggle out of the partial mini settlement at any point of time.

64. The Bench is also aware of the fact that the present Application is not strictly speaking as per the procedure prescribed in Regulation 30A of the CIRP Regulations. The Regulation 30A of the CIRP Regulations requires that the Applicant have to put any application for withdrawal under Section 12A through the IRP, before the constitution of the Committee of Creditors. However, this Bench is not going to get into that issue in terms of the view of the Hon'ble Supreme Court in "**Swiss Ribbons Pvt. Ltd. vs. Union of India**" that *"at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, the Tribunal may in exercise of the inherent powers under Rule 11 of NCLT Rules may allow or disallow an application for withdrawal of CIRP. The claim and rights of other creditors as it stands is not prejudiced/alterd by the withdrawal of CIRP of Corporate Debtor."*

(Emphasis supplied)

65. It is also a fact that this Bench during the initial phase of hearing was considering favourably this Application regarding settlement of claims only with the employees. However, very soon during the course of the

hearing the Bench realised that the list of employees is much more than 32 and the number of employees runs upwards of 100. The Bench also noted that as per the details provided by the IRP, the total claims of the Financial Creditors are about Rs. 5,434.74/- crore. These Financial Creditors are mainly public sector lenders. Therefore, a major issue arose whether it would be proper for the Bench to allow withdrawal of CIRP under section 12A or to exercise, its discretion to reject the present application under Section 12A. The Bench is fully aware that after passing the "Admission Order" dated 13.05.2021 and after the commencement of CIRP, the proceeding are in rem and therefore, any decision regarding the continuation or otherwise of CIRP has to be decided in the interest of all stakeholders and not just a handful of employees. The Bench is fully aware of the fact that under Section 53 of IBC the debts of the Workmen rank equally with the financial debt owed to the secure/ unsecured creditors. The relevant section of the IBC is as under:

Section 53 of IBC:

"53. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following :— (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following-----

(2) -----

(3).-----"

66. Therefore, the fact cannot be ignored while taking a decision, the Bench also has to take into account the interest of all stakeholders. Before taking this discussion further the Bench would like to rely upon some of the prominent Judgments in respect of the scope and ambit of Section 12A of IBC. The Hon'ble Supreme Court in "**Swiss Ribbons Pvt. Ltd. vs. Union of India & Ors.**" [(2019) 4 SCC 17] clearly directed that interest of all stakeholders have to be considered while accepting or disallowing an application for withdrawal:

"

....

82.....

....

We make it clear that at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case.

..."

(Emphasis supplied)

67. The Hon'ble Supreme Court has recently in the matter of **Indus Biotech Pvt. Ltd. vs. Kotak India Venture (Offshore) Fund & Ors. (2021 SCC OnLine SC 268)** has clearly observed that when a petition under is admitted/triggered it becomes a proceeding in rem and even the creditor who has triggered the process would also lose control of the proceedings as Corporate Insolvency Resolution Process is required to be considered through the mechanism provided under the IB Code. The relevant extracts of the Indus Biotech Judgment are reproduced hereunder for ready reference:

".....

*25. In the case of Swiss Ribbons Private Limited vs. Union of India (2019) 4 SCC 17 and Pioneer Urban Land and Infrastructure Limited vs. Union of India &Ors. (W.P.(C) No.43/2019) relied on behalf of Kotak Venture, the entire scope and ambit of the IB Code was considered and the validity of the provisions were upheld. **The said decisions have also been relied on to contend that when the petition under Section 7 of IB Code is triggered it becomes a proceeding in rem and even the creditor who has triggered the process would also lose control of the proceedings as Corporate Insolvency Resolution Process is required to be considered through the mechanism provided under the IB Code.** The principles as laid down in Swiss Ribbons (supra) was also referred to in detail in the case of Pioneer Urban Land and Infrastructure (supra) wherein the observations contained in para 39 though in the case of Real Estate Development was laid down. The relevant portion which has been referred to, reads as follows:-*

"Thus, any allottee/home buyer who prefers an application under Section 7 of the Code takes the risks of his flat/apartment not being completed in the near future, in the event of there being a breach on the part of the developers. Under the Code, he may never get refund of the entire principal, let alone interest. This is because, the moment a petition is admitted under Section 7, the resolution professional must first advertise for and find a resolution plan by somebody, usually another developer which has then to pass muster under the Code, i.e. that it must be approved by at least 66 per cent of the Committee of Creditors and must further go through challenges before NCLT and NCLAT before the new management can take over and either complete construction or pay out for refund amounts.

26. The underlying principle, therefore, from all the above noted decisions is that the reference to the triggering of a petition under Section 7 of the IB Code to consider the same as a proceedings in rem, it is necessary that the Adjudicating Authority ought to have applied its mind, recorded a finding of default and admitted the petition. On admission, third party right is created in all the creditors of the corporate debtors and will have ergaomnes effect. The mere filing of the petition and its pendency before admission, therefore, cannot be construed as the triggering of a proceeding in rem. Hence, the admission of the petition for consideration of the Corporate Insolvency Resolution Process is the relevant stage which would decide 7 the status and the nature of the pendency of the proceedings

and the mere filing cannot be taken as the triggering of the insolvency process.....”

(Emphasis Supplied)

68. That in a similar situation the Hon’ble NCLT Principal Bench did Ranjeet Ramakrishna Yadav vs. JNC Construction Pvt. Ltd. [C.P.(IB) No. 272(PB)/2019] vide its order dated ...07.2018, directed the Applicant and the Ex-management to propose a plan to settle all the claims received by IRP. The Hon’ble Principal Bench NCLT held as follows:

*“....In the present case settlement was reached on 18.06.2019 and CoC has been constituted on 19.06.2019. In the mean while the Interim Resolution Professional, who is present in the Court has received 308 claims from the other financial creditor-home buyers. It is true that in some of the earlier cases we have taken the view that even if the claims have been filed before the IRP and the Committee of Creditors has not been constituted then the application for withdrawal could be entertained and allowed. However, in the present case the CoC has been constituted day after the compromise has been entered and the claims as on today by 308 other home buyers have also been filed. Therefore, we prefer to issue notice of the application to the corporate debtor with the object of seeking its response as to whether it is prepared to satisfy the claims of each and everyone as per the record with the IRP / Corporate Debtor. **In the absence of satisfying the claim of each and every financial creditor/ operational creditor it may not be possible to permit the withdrawal of CIR Process by allowing the instant application as it would result in multiplication of litigation and even the transaction of settlement/ compromise would be hit by the concept of preferential transaction.***

...”

(Emphasis Supplied)

69. During the course of the argument the applicant and the erstwhile management of the Corporate Debtor, in support of their contention to accept their Application u/s, 12A of the IBC, had referred to the Judgment of the Hon'ble **NCLAT in the matter of Anuj Tejpal Vs. Rakesh Yadav and Oyo Hotels and Homes Pvt. Ltd., IA No.815 of 2021 in the Company Appeal (AT) Insolvency No.298 of 2021** where the NCLAT had permitted the withdrawal Application u/s.12A by the Operational Creditor. The Applicant, basing reliance on this had mentioned that, therefore, in their matter also withdrawal u/s.12A of the CIRP initiated against Rolta India Limited may be permitted. However, the bench notes that the facts of the case of Rolta India Limited are totally different from Oyo Hotels and Homes' matter. In Oyo Hotels' case NCLAT had permitted the said withdrawal only on the basis that their claims were lodged only by Operational Creditors and not by Financial Creditors as reflected in the following paragraph of NCLAT's decision:-

"42. It is relevant to note that in the list of claims, totalling to 113, filled up by IRP, 110 are Operational creditors. The claims of 2 Financial Creditors have been rejected."

The bench notes that in the above matter, the Hon'ble NCLAT had permitted withdrawal because, besides the Operational Creditors, there were no claims by the Financial Creditor. However, in the present case, the bench notes that there are several Financial Creditors and the total financial claim collated by the Insolvency Resolution Professional in the matter of Rolta India Ltd is upward of Rs.5000 crore. Thus, this itself would be an enough ground to disallow the present Application for withdrawal u/s.12A.

70. All above decision of Hon'ble Supreme Court and NCLAT clearly shows that even in the event of the original creditor the Corporate Debtor

settling their disputes prior to the constitution of the CoC, the Tribunal has sufficient jurisdiction to reject an application under Section 12A of the IBC if the facts and circumstances of the case warrants such rejection.

71. The Bench also notes that this Corporate Debtor in the past had defaulted in the repayment of its financial obligation to its employees and Financial Creditor. The Bench also is also aware of the fact that a Judicial authority ought not to pass Orders which would lead to further multiplicity of proceedings. Even if this Bench permits withdrawal, it is a fact that all the dues of all the employees of the Corporate Debtor Company are not being settled. As the Bench is aware and as submitted by the RP, about more than 100 employees have lodged their claims against the Corporate Debtor, However, only some employees' claims are being settled by the ex-management/ Promoter of the Company. Therefore, the purported settlement lacks *bona fide*. The Bench, therefore, is of the considered view that, be that as it may, the interest of the employees would in any event will be taken care of during the CIRP of the Corporate Debtor and they being Operational Creditors will be entitled to their rights as provided for under the IBC. The Bench has no doubt in its mind that considering that CIRP proceedings are in rem, the substantial claims of Financial Creditors cannot be disregarded or ignored in view of the purported settlement of certain employees of the Corporate Debtor.

72. In view of the above, this Bench dismisses IA 1196 of 2021 in CP 1069 of 2020 filed by Mr. Dinesh Gupta under Section 12A of the IBC and the CIRP against the Corporate Debtor Company would continue.

SD/-
Chandra Bhan Singh
Member (Technical)
(yg)

SD/-
Suchitra Kanuparthi
Member (Judicial)