

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

CP (IB) 1069/MB/2020

Under Section 9 of the I&B Code, 2016

In the matter of

Dinesh Gupta

C/o. Rajdeep Samudrala, Advocate,
Hight Court, Law Chambers of
Samudrala, 2, Rewa Chambers, 31,
New Marine Lines, Mumbai – 400 020.

...Petitioner

v/s

Rolta India Limited

Rolta India Limited, Rolta Tower – C,
Rolta Technology Park, MIDC, Marol,
Andheri (east), Mumbai – 400 093.

...Corporate Debtor

Order Delivered on: 13.05.2021

Coram:

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

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Petitioner: Mr. Udaya Sankar Samudrala a/w Sandhya
Shukla, Advocates i/b Rajdeep Samudrala.

For the Corporate Debtor: Mr. Shadab Jan, Advocate.

Per: Chandra Bhan Singh, Member (T)

ORDER

1. This is an application being CP(IB)1069/MB/2020 filed by **Dinesh Gupta**, an employee of Rolta India Limited. Operational

Creditor/Petitioner has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in the capacity of "Operational Creditor" by invoking the provisions of section 9 of Insolvency & Bankruptcy Code, 2016 (**Code**) against **Rolta India Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**). This Application by the Operational Creditor has been filed in NCLT on 26.02.2020.

2. In the requisite Form, under the head "Particulars of Operational Debt", the total amount in default is stated to be Rs. 16,25,019/-.

SUBMISSIONS BY THE PETITIONER

3. A brief history of the transaction between the Petitioner and the Corporate Debtor is as follows. The Corporate Debtor is a well-established Information Technology Company having high turnover and also having branches and offices all over the world.

4. The Petitioner Dinesh Gupta was an employee of the Corporate Debtor and worked with the Corporate Debtor as Group Manager-L1 from 01.04.2013 to 14.06.2019. The Petitioner was forced to leave his employment with the Corporate Debtor and the Corporate Debtor relieved the Petitioner on 14.06.2019.

5. The Petitioner also bring on record evidence supporting his claim to demonstrate he was an employee of the Company from 01.04.2013 to 14.06.2019. The details of which are as under:

- a. Appointment letter dated 01.04.2013 confirming appointment of the Petitioner by the Corporate Debtor is attached to the petition at Exhibit – C.
- b. Relieving letter dated 14.06.2019 issued by the Corporate Debtor which confirms the last date of employment of the Petitioner with the Corporate Debtor is 14.06.2019, the said letter is attached to the petition at Exhibit – F.

- c. Total amount that have been admitted as payable by the Corporate Debtor on the last date of employment of the Petitioner, as per the relieving letter, in the full and final settlement report dated 29.06.2019:

Month	Amount (Rs.)
January, 2019	1,43,146.00
February, 2019	1,43,061.00
March, 2019	1,59,034.00
April, 2019	1,69,855.00
May, 2019	1,69,853.00
June, 2019	2,57,718.00
Total	10,42,667.00

The amounts have been claimed by the Petitioner in his statement of claim in Annexure – I to the petition is shows the same amounts, as follows:

Particulars	Amounts (Rs.)
Salaries for the period from January, 2019 to June, 2019	8,85,379.00
Leave encashment	12,250.00
Gratuity	1,45,038.00
Total	10,42,667.00

The remaining amounts claimed by the Petitioner are as follows:

Particulars	Amounts (Rs.)	Basis of Claim
Sodexo claim	18,000.00	As per Company Policy
P. F. Deductions	85,140.00	P. F. deduction made by the Corporate Debtor, but not paid to the Provident Fund Authorities.
TDS	3,17,744.00	Tax deducted by

Deductions		Corporate Debtor, but not paid to the Income Tax Authorities.
Professional Tax	2,100.00	Professional Tax deducted by the Corporate Debtor, but not deposited with the concern Authorities.
Interest Amount	1,59,368.00	As per letter issued by the Corporate Debtor to the Petitioner
Total	5,82,352.00	

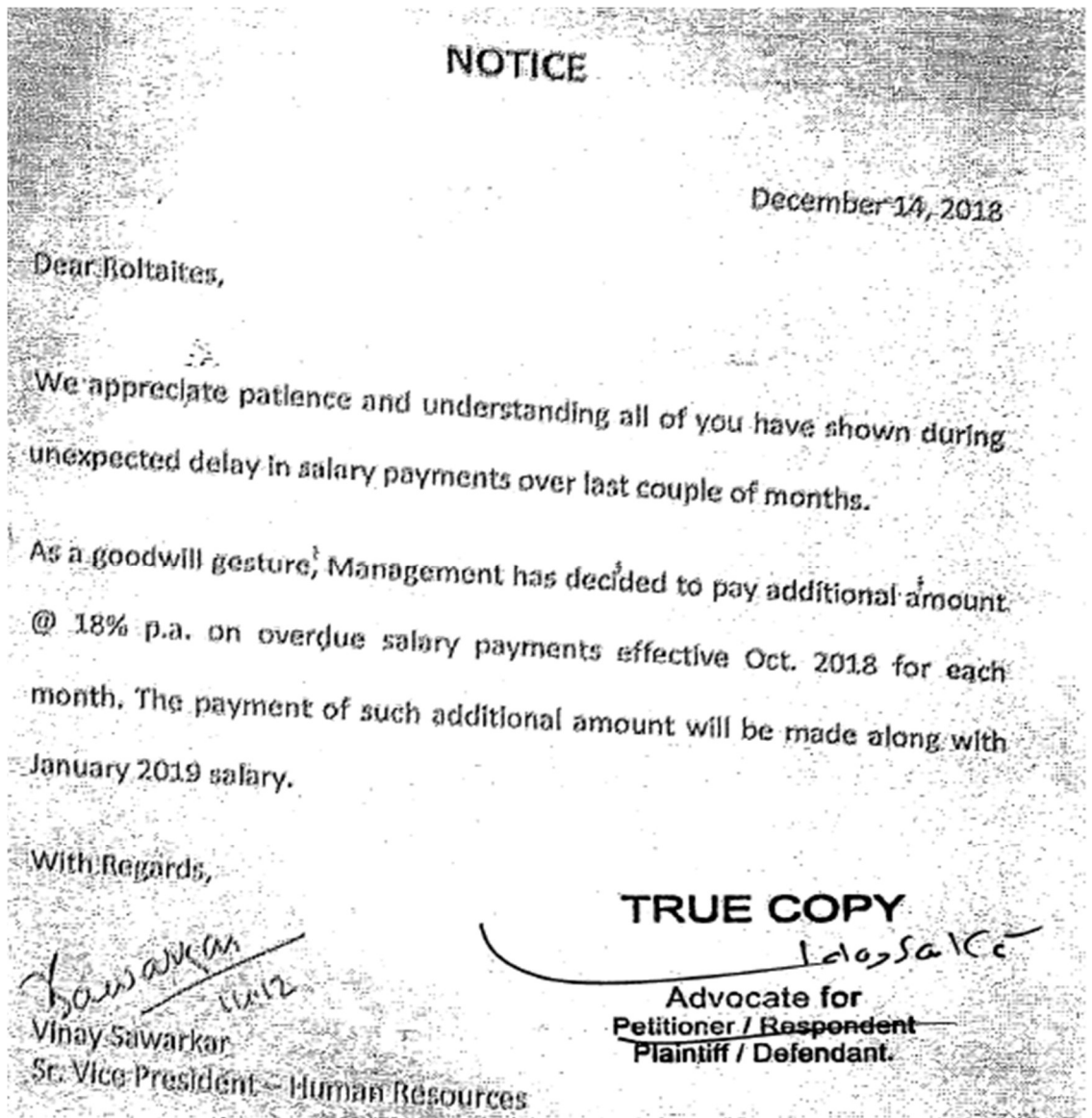
d. The Petitioner at Exhibit – E of the company petition also shows Corporate Debtor's announcement on 14.12.2018, wherein they committed to pay interest @ 18% per annum on all overdue payments effective from October, 2018.

6. The Petitioner states that the Corporate Debtor did not make any payment of salaries and allowances for the period from January, 2019 to 14.06.2019 to the Petitioner amounting to Rs.8,85,379/- and also leave encashment and gratuity, in all, amounting to Rs.10,42,667/-.

7. The Petitioner further states that up to 14.06.2019, an amount of Rs.3,17,744/- was deducted from the salary of the Petitioner by way of TDS. However, the same was not deposited by the Corporate Debtor with the concerned Income Tax Department.

8. The Petitioner further mentions that the Provident Fund contributions of employer and employee amounting to Rs.85,140/- was also deducted by the Corporate Debtor and the same was not credited to the concerned Provident Fund Authorities by the Corporate Debtor.

9. Corporate Debtor, vide its letter dated 14.12.2018, unconditionally agreed to make payment of interest @ 18 % per annum on overdue salaries to the Petitioner from October, 2018 to January, 2019. But till date neither the overdue salaries were paid nor the interest were paid by the Corporate Debtor.



10. The Petitioner further mentions that various substantial amounts by way of unpaid salaries and other due and also amounts deducted to pay to the Government Authorities and not deposited despite passage of nearly 3 years are payable by the Corporate Debtor.

11. On account of non-payment of the dues, the Petitioner, vide Demand notice dated 04.02.2020 issued under Rule 5 of IBC called upon the Corporate Debtor to make payment or to demonstrate such payments were made to the Petitioner by furnishing proof. The Corporate Debtor received the Statutory Notice on 11.02.2020, but failed to reply to the said Notice.

SUBMISSIONS BY THE CORPORATE DEBTOR IN REPLY

12. The Counsel for the Corporate Debtor submits that the present Petition is not maintainable as per the Central Government Notification dated 24.03.2020. The Central Government exercised its powers under Section 4 of the Code and issued a notification SO 1205 (E) specifying Rs. 1 Crore as the minimum amount of default for the purposes of Section 4 of the Code. In the present case, the claim amount is clearly below the minimum threshold specified under Section 4 of the Code. Therefore, the present Petition is explicitly barred and bound to be rejected.

13. The Counsel for the Corporate Debtor then submits that any dues which fall under the Income Tax Act, 1961 or the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) are payable to the concerned government or local authority and not the Petitioner herein. Therefore, the claim of the Petitioner, so far as the same comprises of TDS and PF dues, would not be maintainable as the same is not an operational debt and hence, not payable to the Petitioner.

14. The Petitioner in the present Petition has included interest amount in the outstanding amount which is also not maintainable. According to the Company Policy, more particularly, Clause 11 of the Exit and Final Settlement Procedure specifically states that in case of any delay in crediting the pending salary or the full and final settlement amount or any other dues to the ex-employee, no interest will be payable by the Company for the delayed period. Furthermore, the Office Circular or Notice, issued by the Corporate Debtor and relied upon by the Petitioner, is not a concluded contract between the parties, and cannot be enforced. The said Office Notice was applicable only for the employees in the service of the Corporate Debtor and the Petitioner, being out of the services of the Corporate Debtor, cannot claim under the same.

15. The Counsel for the Corporate Debtor further submits that the Petitioner has annexed and relied upon the Statement of Account of the Petitioner maintained with a banking company. However, the Petitioner has not produced any certificate under the Bankers' Books Evidence Act, 1891 (BBE Act) and failed to furnish any of the certificates as required under the BBE Act. Therefore, the statements produced with the Petition cannot be taken into evidence or be treated as proof of any transaction set out therein. Also, the Petitioner is bound to produce the documentary proof evidencing that there is no payment of unpaid operational debt in the manner provided under the Code and the Rules made thereunder. As a result of this, the Petition filed by the Petitioner is incomplete and thus, deserves to be rejected with cost.

16. The Counsel for the Corporate Debtor further submits that there are around 40 Applications filed by the other employees along with the present Petitioner for claims of similar nature and that too, through the same Advocate on Record. Therefore, the Corporate Debtor proposed to hold discussions with all the Applicants to arrive

at an amicable settlement with all the Applicants/ employees concerned. Accordingly, the Corporate Debtor undertook to facilitate meetings between the concerned Applicants/ employees and the concerned personnel from the Human Resources (HR) department of the Corporate Debtor. The discussions are ongoing and the delay caused in arriving at a settlement with all the Applicants is due to the fact that the Corporate Debtor endeavours to settle with all of its employees together, without giving any preferential treatment to any of its employee. Therefore, it is reiterated that it would be in the interest of justice and welfare of all stakeholders if the Corporate Debtor is allowed to seek resolution in a holistic manner.

FINDINGS

17. The Bench notes that the present Petition is a clear case of the employee dues. The Petitioner herein was an employee of the Corporate Debtor for the period from 01.04.2013 to 14.06.2019. During this period of service of the Petitioner, the Corporate Debtor failed to pay the Petitioner his salary, allowances, statutory provident fund, TDS amounts and other benefits in full. Consequently, the Petitioner issued the Demand Notice dated 04.02.2020 calling upon the Corporate Debtor to pay all the outstanding dues. But the Corporate Debtor has not paid any amount to the Petitioner till date.

18. The Corporate Debtor contended that the present Petition is not maintainable as the claim amount is below the threshold limit of Rs.1crore which is in vogue subsequent to the notification of 24.03.2020. The Bench, however, notes that this claim amount was raised in the year 2019 and the demand notice by the Petitioner was sent to the Corporate Debtor on 04.02.2020 which was received by the Corporate Debtor on 11.02.2020. The Company Petition was filed on 26.02.2020. Therefore, this Bench is of the considered view that this Petition was filed much prior to the issue of the notification of

24.03.2020, which had enhanced the threshold limit for initiating Insolvency proceedings from Rs. 1 lakh to Rs. 1 crore. The Bench further notes that the Corporate Debtor, neither in its Reply nor in its Written Submissions, has disputed the outstanding dues by way of salary of the Petitioner. Instead, the Corporate Debtor has contended that it is trying to settle the dues of about 40 other Applicants/Petitioners who have filed Petition before NCLT for similar claims towards their salary dues.

19. The Corporate Debtor herein, through its Reply to the Petition and Written Submissions, has raised few defences which are moonshine defence put forth and, therefore, not acceptable to the Bench.

20. The Bench, in view of the above, has absolute clarity that the amount due by way of salary and wages qualifies as 'Operational Debt' as per section 5(21) of the Insolvency and Bankruptcy Code and 'default' is also established as per section 3(12) of the Code. The Bench, therefore, 'Allows' the Company Petition **CP (IB) 1069/MB/2020** under Section 9 of the I&B Code, 2016 initiating CIRP against the Corporate Debtor M/S Rolta India Limited.

21. The Petitioner has not proposed the name of any Insolvency Professional for carrying out the function as provided under Section 14 of the Act. Therefore, this Bench, by exercising its powers given under Section 16 of the Code, hereby appoints Ms. Vandana Garg; having IBBI registration number: IBBI/IPA-001/IP-P00025/2016-17/10058, as an Interim Resolution Professional to conduct the Insolvency Resolution Process.

22. This Bench, on perusal of the documents filed by the Petitioner, is of the view that the Corporate Debtor defaulted in

paying the total outstanding dues to the Petitioner. Therefore, the Petition under Section 8 & 9 of the Code is taken as complete, accordingly this Bench hereby admits this Petition, prohibiting all of the following of item-(I), namely:

(I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(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.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section

31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Ms. Vandana Garg; having IBBI registration number: IBBI/IPA-001/IP-P00025/2016-17/10058 as an Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

23. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

SD/-

Chandra Bhan Singh
Member(Technical)

SD/-

Suchitra Kanuparthi
Member(Judicial)