

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

**CP No. 1370/MB-V/2020**

*Under section 8 & 9 of the IBC, 2016*

*In the matter of*

Milan Vasant Sanyasi

C/o Mr. Rajdeep Samudrala, Adv.,  
High Court, Law Chambers of  
Samudrala, 2, Rewa Chambers, 31,  
New Marine Lines, Mumbai- 400020  
...Petitioner

V/s

Volta BI and Big Data Analysis  
Private Limited

Volta Tower-A, Volta Technology  
Park, MIDC, Marol Andheri (East)  
Mumbai-400093.

...Corporate Debtor

Order Pronounced On: 13.05.2021

*Coram:*

Smt. Suchitra Kanuparthi : Member (Judicial)  
Shri. Chandra Bhan Singh : Member (Technical)

*Appearances (Via Video Conference):*

For the Petitioner : Adv. Udaya Sankar Samudrala  
a/w Adv. Sandhya Shukla I/b  
Adv. Rajdeep Samudrala  
For the Respondent : Mr. Shadab S. Jan (Adv.)

*Per: Suchitra Kanuparthi Member (Judicial)*

**ORDER**

1. This company Petition is filed by Milan Vasant Sanyasi (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Rolta BI and Big Data Analysis Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the extent of Rs.27,31,793 /-, principal being Rs. 23,75,472/- and interest amounting to Rs.3,56,321/-, by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition reveals that the Petitioner was an employee working as a manager with the Corporate Debtor. The Petitioner served with the Corporate Debtor from 24.10.1994 to 04.02.2019. The Petitioner was forced to leave the services of the Corporate Debtor on 04.02.2019.
3. The Petitioner was forced to be relieved from the services of the Corporate Debtor. However, the salary allowances and other due and payable amounts including the statutory provident fund and TDS amounts and the post-retirement benefits were not paid to the Petitioner.
4. The Petitioner on 20.12.2019 issued a demand notice to the Corporate Debtor, Under Section 8 of the Code, demanding a sum of Rs. 24,27,312/-. There was no reply from the Corporate Debtor for the Demand Notice.
5. The Petitioner submits that on 20.03.2019 the Corporate Debtor sent a full and settlement report to the Petitioner but till date no settlement has taken place. The final settlement report of the Corporate Debtor is reproduced below:



**Rolta Final Settlement Report**

Date: 20-MAR-2019

Name : Mr. Milan Sanyasi  
 Employee Number : RBDA-000246  
 Date of Birth : 08-Dec-1971  
 Age : 47  
 Designation : Manager-L1  
 Salary Basis : 99,326.00

Date of Joining : 24-OCT-1994  
 Date of Leaving : 01-Feb-2019  
 Length of Service : 24 Years and 101 Days  
 Reason for Leaving : Better Opportunity  
 Department : GIS Services  
 Location : Rolta, Seepz-Mumbai

Regular Pay for Period: 31-Jan-2019 & 01-Feb-2019

Amount in INR.

**Earnings**

Description	Amount
Basic	22,889.00
Food Coupon (Taxable)	2,071.00
GAR	21,232.00
HRA	39,591.00
Medical Allowance Retro	12,345.00
Performance Link Allowance	5,955.00
Telephone	2,589.00
<b>Total</b>	<b>106,872.00</b>

**Deductions**

Description	Amount
Income Tax	69,375.00
EE Statutory PF Contribution	2,747.00
Professional Tax	500.00
<b>Total</b>	<b>72,622.00</b>

**Amount due to employee**

Description	Amount Paid	Amount Exempted	Taxable Amount
Commutated Pension	0.00	0.00	0.00
Gratuity Payment	306,000.00	306,000.00	0.00
Leave Encashment	200,328.00	0.00	200,328.00
PF Settlement	0.00	0.00	0.00
<b>Total</b>	<b>506,328.00</b>	<b>306,000.00</b>	<b>200,328.00</b>

**Other Deductions**

Description	Amount
<b>Total</b>	<b>0.00</b>

**Net Amount Payable**

Gross Earnings	Gross Deductions	Net Amount
613,200.00	72,622.00	540,578.00

In Words : Rupees five lac forty thousand five hundred seventy eight and zero paise only

Add: Nov-18 77,561/-  
 Dec-18 77,566/-  
**Total Rs. 6,95,705/-**



**Rolta Final Settlement Report**

Date: 20-MAR-2019

**Settlement Calculations**

**Leave Encashment**

Leave Type	Balance (Days)	Notice Period Adjusted	Remaining Leave Balance	Leave Encashment Amount
Paid Leave	98.5		98.5	300,328.00

**Gratuity Payment**

Last Drawn Salary	Complete Service Year	Calculated Amount	Forfeiture Amount	Forfeiture Reason	Gratuity Amount
22,400.00	24	306,000.00			306,000.00

**Employer Charges**

Description	Amount
EDLI Contribution	79.00
EPS Contribution	1,316.00
Employer PF Contribution	1,431.00
<b>Total</b>	<b>2,826.00</b>

**Income Tax Computation**

Description	Amount
Salary Under Section 17	1,160,634.00
Value of Perquisites	0.00
Gross Salary	1,160,634.00
Allowances Exempted u/s 10	1,100.00
Deductions under Sec 16	42,300.00
Total Chapter VIA Deductions	26,615.00
Total Income	1,090,620.00
Tax on Total Income	139,686.00
Total Tax payable	145,273.00
Income Tax till Date	145,273.00
Balance Tax	0.00
Less: Total Tax Paid	145,273.00
Balance Tax Payable	0.00

**ROLTA Final Settlement Report**

Date: 20-MAR-2019

**Other Element Information**

Description	Amount
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**Other Information**

Description	Number
LOP Days	0
No. of Children	1
LOP Days	0
No. of Children	1

**Other Balance Information**

Description	Amount
Employee PF Contribution	26,615.00
Income Tax till Date	139,686.00
Education Cess till Date	5,387.00
<b>Total Tax Deducted Till Date</b>	<b>145,273.00</b>

**Payment Details**

Payment Type	Bank	Account Number	Amount
India Direct Deposit	Union Bank of India, Andheri, Mumbai	542202010002739	540,578.00

Prepared by

Verified by

Approved by

**SUBMISSIONS BY THE CORPORATE DEBTOR**

6. The Corporate Debtor submits that the Application in the contravention of Section 10A of the Code, 2016. The said Application is misconceived frivolous, vexations, baseless and has been filed in abuse of process of the Code and thus liable to be dismissed.

7. The Corporate Debtor submits that there are around 40 other Applications filed by the other employees of the Corporate Debtor for the claims of similar nature and that too through the same advocate on record, the Respondent proposed to hold without prejudice discussions with all the Applicants to arrive at an amicable settlement with all employees concerned. Accordingly, on the last date of hearing, the Corporate Debtor undertook to facilitate meetings between the concerned applicant-employees, and the concerned personnel from the Human Resources (HR) department of the Corporate Debtor.

8. The Corporate Debtor's HR Department and other depts. staff test positive for COVID-19, as the Corporate Debtor's office operating without sufficient staff and working only with skeletal support for its clients forming part of essential services. The Corporate Debtor annexed the details of the employees who test positive along with their medical reports.

9. After the mandatory quarantine period of certain senior employees in the HR department was completed and the minimum staff support was available for accessing records, a schedule was proposed by the advocates of the Corporate Debtor to hold personal / one to one discussion between the respective employees on a designated date & time. The said schedule was shared with the advocates for such employees for confirmation and comments, if any, vide email dated 03.04.2021.

10. In response, the advocates for the concerned employees addressed an email/letter dated 05.04.2021 inter alia accepting the proposed schedule, and agreeing to hold discussions between the concerned employees and the personnel of the HR department.

11. In pursuance of the aforesaid, the concerned employees and Respondent, through their advocates, have exchanged correspondence on

05.04.2021 on the status of the proposed meetings. Furthermore, in accordance with the proposed schedule, the Respondent (through its HR Dept.) has held meetings with the following's employees till date:

Sr. No.	Name
1.	Mr. Barkha Pranav Shah
2.	Mr. Barkha Pranav Shah
3.	Mr. Barkha Pranav Shah
4.	Ms. Geetashree Borah
5.	Mr. Kamlesh Tekchandani
6.	Ms. Mini Pillai
7.	Mr. Nitin Arora
8.	Mr. Pravin Raijade
9.	Mr. Rajesh Dalvi
10.	Ms. Reshma Dhotre
11.	Mr. Sagar Nagavkar
12.	Mr. Srikanth Babu Gingade

12. The discussions are ongoing at the time of filing this present Affidavit in Reply and the same is expected to conclude in two weeks. Notably, the delay caused in arriving at a settlement with the Applicants is due to the fact that the Respondent endeavors to settle with all of its employees together, without giving preferential treatment to any one of its employees, coupled with the guidelines and restrictions imposed by the government on account of the present COVID-19 Pandemic.

13. In the present case, the Applicant has annexed and relied upon the Statement of Account of the Applicant maintained with a banking company.

14. Bankers' Books Evidence Act, 1891 ('**BBE Act**') is a complete code for the law of evidence with respect to Bankers' Books i.e., ledgers, day-books, cash-books, account-books and all other books used in the ordinary course of business of a bank. The provisions of the BBE Act

specifically provide the mode, manner and method in which bankers' books and entries therein are to be proved.

15. Any entry in a banker's books to be taken as prima facie evidence of the existence of such entry, and to be admitted as evidence of the matters reflected therein, should strictly comply with the provisions of the BBE Act.

16. More particularly, the BBE Act provides that any entry to be admitted as evidence of the matters reflected therein should be furnished as a certified copy. Furthermore, such certified copies of bankers' books should meet the requirements laid down in Section 2A of the BBE Act. The relevant provisions of the BBE Act are reproduced herein for reference:

***"Section 4. Mode of proof of entries in bankers' books:-***

*Subject to the provisions of this Act, a certified copy of any entry in a banker's books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.*

***Section 2A. Conditions in the printout:***

*A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely:— (a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and (b) a certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of— (A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by*

*authorised persons; (B) the safeguards adopted to prevent and detect unauthorised change of data; (C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons; (D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices; (E) the mode of verification in order to ensure that data has been accurately transferred to such removable media; (F) the mode of identification of such data storage devices; (G) the arrangements for the storage and custody of such storage devices; (H) the safeguards to prevent and detect any tampering with the system; and (I) any other factor which will vouch for the integrity and accuracy of the system. (c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.”*

17. In summary, the scheme of the BBE Act provides that a certified copy of any entry in a bankers' books shall be considered as prima facie evidence of the transactions and accounts stated therein. Furthermore, the BBE Act provides that printout of any entry or copy thereof shall be accompanied by-

- i. certificate to the effect that is a printout of such entry by the principal accountant or branch manager ('First Certificate'); AND
- ii. certificate by a person in-charge of a computer system containing a brief description of the computer system and particulars thereof as prescribed under BBE Act ('Second Certificate'); AND

iii. a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly or is appropriately derived from, the relevant data. ('Further Certificate');

18. In light of the above, and more particularly in view of the fact that the Applicant has failed to furnish any of the certificates as required under the BBE Act, the aforesaid documents cannot be taken into evidence or be treated as proof of any transaction set out therein.

19. Corporate Debtor further submits that the Petitioner is bound to produce documentary proof evidencing that there is no payment of an unpaid operational debt in the manner provided under the Code and Rules made thereunder.

20. Considering the aforesaid, as well as the present Application along with its exhibits, it is humbly submitted that Applicant has failed to submit any proof of debt/default. As a result of this, the Application filed by the Applicant is incomplete and thus deserves to be rejected with cost.

21. The Petitioner in the present Application has claimed an amount of Rs.27,31,793/- towards alleged outstanding dues. The Applicant has included an amount of Rs.60,858/- in the aforesaid claim amount towards statutory dues.

22. It is submitted that the statutory dues being payable directly to the respective authorities, the Applicant is falsely claiming the same to exaggerate the claim amount.

23. It is well settled law that the Applicant is entitled to claim interest under the Insolvency and Bankruptcy Code, 2016 only when the same is contractually agreed between the parties.

24. Further, it is submitted that 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.

25. Thus, in the present case the Applicant is not entitled to claim any interest from the Corporate Debtor.

**FINDINGS:**

26. The petition is filed by one of the Ex-Employee of the Corporate Debtor Named Milan Vasant Sanyasi who worked with the Corporate Debtor as Manager from 24.10.1994 to 04.02.2019. The Petitioner was forced to leave his employment with the Corporate Debtor and the Corporate Debtor relieved the Petitioner on 04.02.2019.

27. The Corporate Debtor did not make payment of salaries and allowances for the period November, 2018 to January, 2019 to the Operational Creditor amounting to Rs.2,27,749.00 and also notice period payment, leave encashment and gratuity, in all, amounting to Rs.24,27,312.00. An amount of Rs.43,290.00 was deducted from the salary of the Operational Creditor as and by way of TDS from April, 2018 to January, 2019. However, the same was not deposited by the Corporate Debtor with the concerned Income Tax Department, Though Provident Fund contributions of employer and employee amounting to Rs.16,368.00 were deducted by the Corporate Debtor, the same was not credited to the concerned Provident Fund Authorities by the Corporate Debtor.

28. Corporate Debtor, vide its letter dated 14<sup>th</sup> December, 2018, unconditionally agreed to make payment of interest @18 % per annum on overdue salaries to the Operational Creditor from October, 2018 onwards in January, 2019. Neither the overdue salaries were paid nor the interest was paid. The Petitioner is entitled to payment of interest. Thus, various substantial amounts by way of unpaid salaries and other due and payable amounts and also amount deducted to pay to the Government Authorities and not deposited despite the passage of nearly three years are payable by the Corporate Debtor. Letter of Corporate Debtor dated 14.12.2018 is reproduced below:

**NOTICE**

December 14, 2018

Dear Roltaites,

We appreciate patience and understanding all of you have shown during unexpected delay in salary payments over last couple of months.

As a goodwill gesture, Management has decided to pay additional amount @ 18% p.a. on overdue salary payments effective Oct. 2018 for each month. The payment of such additional amount will be made along with January 2019 salary.

With Regards,

A handwritten signature in black ink that reads 'Sawarkar' with a date '14/12' written below it.

Vinay Sawarkar  
Sr. Vice President - Human Resources

29. The final Settlement report as furnished by the Corporate Debtor to the petitioner shows the following total amounts that have been ADMITTED as payable by the Corporate Debtor on the last date of employment of the Operational Creditor with the Corporate Debtor. The Relieving Letter, in the Full and Final Settlement Report dated 20th March, 2019 captures the following figures:

<b>Months</b>	<b>Amount Rs.</b>
November, 2018	77,561.00
December, 2018	77,566.00
January, 2019	5,40,578.00
<b>Total</b>	<b>6,95,705.00</b>

The amounts that have been claimed by the Petitioner in his statement of claim in Annexure-I to the Company Petition on page 10 shows the same amounts, as follows:

<b>Particulars</b>	<b>Amount (Rs.)</b>
Salary for November, 2018 to January, 2019	2,27,749.00
Leave encashment	2,13,000.00
Gratuity	3,06,000.00
<b>Total</b>	<b>7,46,749.00</b>

Slight differences exist due to record mismatch; however, most of the amounts claimed by the Operational Creditor is an admitted liability by the Corporate Debtor. The remaining amounts claimed by the Petitioner are as follows:

<b>Particulars</b>	<b>Amount (Rs.)</b>	<b>Basis of Claim</b>
Performance-linked incentive.	52,000.00	As per contract.
Compensation for 24 years and 4 months.	11,88,000.00	As per contract.
Sodexo Claim	14,000.00	As per contract.
Other Reimbursements	12,500.00	Claim for payments made as per Company Policy.
P.F. Deduction	16,368.00	PF deduction made by Corporate Debtor; but not paid to the Provident Fund Authority.
TDS Deduction	43,290.00	Tax deducted at source by Corporate Debtor, but not paid to the Income Tax Authority.
Professional Tax	1,200.00	Profession Tax deducted by Corporate Debtor, but failed to pay to the concerned Authority.
Notice Pay	2,88,000.00	Salary for 3 months' notice period payable in accordance with the terms of contract.
Interest amount	3,69,686.00	As per letter issued by the Corporate Debtor to

		the Operational Creditor (Please refer to para no. 4(d) below).
<b>Total</b>	<b>27,31,793.00</b>	

30. This bench is of the considered opinion that the petitioner was an employee and has a legitimate right to claim the unpaid salary dues as claimed by the Petitioner. The Corporate Debtor has no grounds of defence except that a) settlement process is going on b) the petition is incomplete c) the account statement is unaccompanied by certificate as issued by Bankers Books of evidence, d) Proof of default. The Corporate Debtor issued a final settlement report which captures certain amounts payable to the Petitioner and the rights of the petitioner to receive his monthly emoluments/salary till the date of resignation cannot be denied by the Corporate Debtor. Bank Statements shows payment of Rs. 77,557.00 on 27.11.2018 for the Month of October, 2018. No other credits appeared in this Bank Statement till, April 2019. Further the Corporate debtor has deducted the TDS and not paid to the Department.

31. On account of these defaults, the Operational Creditor has received tax notices and intimation under Section 143 (1) and was levied fines and penalties, which ought to be paid by the Corporate Debtor. These amounts are also to be included in the recoverable from the Corporate Debtor, since it arose after the filing of the Company Petition.

32. The Demand Notice was sent on 20th December, 2019 and received by the Corporate Debtor on 28<sup>th</sup> January, 2020. Company Petition was filed on 26<sup>th</sup> February, 2020 well before the lockdown. The Petition was within the threshold limit as prescribed under section 4 of the Insolvency and Bankruptcy Code, 2016. The claim of the counsel for the Corporate debtor that the petition is not maintainable on this ground is untenable.

33. The matter was earlier listed on various occasions and thereafter the matter was listed on 19.02.2021 on that Hon'ble bench observed that Many of the matters have already been come up for hearing. The bench

provided sufficient opportunity to the Counsel for the Corporate debtor to settle the matter amicably. Thereafter on 16.04.2021, the matter was heard and Reserved for Orders.

34. This bench is of the considered view that the petitioner was employed on the rolls of the Corporate Debtor and the Corporate Debtor defaulted in payment of salaries, hence the petition is Admitted.

35. This Bench having been satisfied with the Petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code, admits this Petition, declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) 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.
- (c) 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.
- (d) that the order of moratorium shall have effect from today till the completion of the CIRP 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.

- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) Since the Operational Creditor has not proposed the name of any IRP in the matter, this Adjudicating Authority hereby appoints Ms. Vandana Garg, Registration No. IBBI/IPA-001/IP-P00025/2016-2017/10058, having address at Unit No. 307, 3rd Floor, Exgellencia Lodha Supremus 2, Wagle Estate, Panchpakhadi, Thane, Maharashtra ,400604, Email id: [vskgarg0899@gmail.com](mailto:vskgarg0899@gmail.com) as the IRP. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 16 of the IBC reads as:

**16. Appointment and tenure of interim resolution professional. -**

*(1) The Adjudicating Authority shall appoint an interim resolution professional 1[on the insolvency commencement date].*

*(2) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.*

*(3) Where the application for corporate insolvency resolution process is made by an operational creditor and-*

*(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*

*(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.*

*(4) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the*

*Adjudicating Authority against whom no disciplinary proceedings are pending.*

*(5) The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22.*

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

Sd/-

Chandra Bhan Singh  
Member (Technical)

Sd/-

Suchitra Kanuparthi  
Member (Judicial)