

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

**CP (IB)/1316/MB/2020**

Under section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

*In the matter of*

**Ms. Mini Shivkumar Pillai**, C/o. Mr. Rajdeep Samudrala, Law Chambers of Samudrala, having its address at 2, Rewa Chambers, 31, New Marine Lines, Mumbai 400020.

**..... Applicant/ Operational Creditor**

**Versus**

**Rolta Defence Technology Systems Private Limited**, having its registered office at :- Rolta Tower-C, Rolta Technology Park, MIDC, Marol, Andheri (East), Mumbai 400093.

**.....Respondent/Corporate Debtor**

**Order Delivered on :- 02.11.2023**

*Coram:*

**Mr. Anuradha Sanjay Bhatia**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

***Appearances:***

For the Operational Creditor: Adv. V.N. Ajikumar for M/s. VNA Legal.

For the Corporate Debtor: Adv Shadab S. Jan for M/s. Crawford Bayley & Co.

**ORDER**

***Per: - Shri. Kuldip Kumar Kareer (Hon'ble Judicial Member)***

1. This Company petition is filed by Ms. Mini Shivkumar Pillai, an employee of the Respondent-Corporate Debtor (hereinafter referred to as "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Rolta Defence Technology Systems Private Limited. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Company Petition was filed on 02.03.2020 claiming an amount of Rs.6,13,580/- (Rupees Six Lakhs, Thirteen Thousand, Five Hundred and Eighty Only), of which the principal amount outstanding is Rs. 5,78,849/-, and interest on the principal outstanding as on 12<sup>th</sup> December, 2019 claimed by the Operational Creditor is Rs.34,731/-.

3. The details of the transactions leading to the filing of this Application as averred by the Operational Creditor in the application are as follows:
- a) The Operational Creditor was an employee working as a Software Lead Engineer-LS with the Corporate Debtor. The Operational Creditor served with the Corporate Debtor from 26<sup>th</sup> February, 2016 to 16<sup>th</sup> August, 2019. The Operational Creditor was forced to leave the services of the Corporate Debtor on 16th August, 2019.
  - b) During her tenure of service, the Operational Creditor was not paid her salary and allowances in full. The Corporate Debtor agreed to make the payment of the salaries and allowances of the Operational the Creditor with interest at the rate of 18% per annum with effect from January, 2019. The Corporate Debtor did not deposit the employer contribution of Provident Fund for the months of August, 2018 to August, 2019 amounting to INR 40,032/-. The Corporate Debtor deducted TDS for the months of April, 2018 to August, 2019 amounting to Rs.1,98,325/- and, however, failed to deposit the same with the Income Tax Authorities. The total arrears of salary of the Operational Creditor, including the other pecuniary benefits and also the amounts of TDS deducted from salary but not deposited with the Income Tax Authorities, as on 16.08.2019 is Rs.5,78,849 /-. Interest on Rs.5,78,849 /- at the rate of 18% per annum from 16.08.2019 till 30.11.2019 works out to Rs.34,731/-. The debt fell due on 16.08.2019.
  - c) However, the salaries, 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 Operational

Creditor until the date of filing the petition. The Operational Creditor issued a Demand Notice dated 12<sup>th</sup> December, 2019 on the Corporate Debtor in Form No. 3 demanding the payment of the entire due and payable amount. The Corporate Debtor received the demand notice. However, the Corporate Debtor did not furnish a satisfactory reply to the said demand notice. The Corporate Debtor also neither made the payment nor did they raise any dispute regarding the due and payable amount claimed by the Operational Creditor in his demand notice issued in Form No.3 above.

d) Hence, the Operational Creditor filed the present petition u/s 9 of the Insolvency & Bankruptcy Code against the Corporate Debtor.

4. **Submissions of the Respondent-Corporate Debtor in brief:**

- a. The captioned Company Petition was filed by the Petitioner on 02nd March 2020, under section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code"), for initiating Corporate Insolvency Resolution Process against the Respondent for the alleged dues payable towards salary, interest, leave encashment, performance linked incentives, other reimbursements, provident fund, TDS and other taxes.
- b. The Petitioner filed the captioned Petition for an alleged amount of Rs. 6, 13,580/- (Rs. Six Lakh Thirteen Thousand Five Hundred and Eighty Only) which were claimed under the different heads as follows-
  - a. Salary-Rs. 1,89,781/-
  - b. Interest@ 18% p.a. -Rs.45,939/-
  - c. Leave Encashment - Rs. 31, 109/-

- d. Other Reimbursements (ti II August 2019) - Rs 24,000/-
  - e. Performance Linked Incentive -Rs 81,000/-
  - f. Provident Fund -Rs. 25,032/-
  - g. Employee's Pension -Rs. 15,000/-
  - h. TDS - Rs. 1.98,325/-
  - i. Professional Tax -Rs. 3,400/-
- c. This Hon'ble Tribunal vide an order dated 13<sup>th</sup> May, 2021 admitted Company Petition No. 1302/2020 filed by one Nitin Arora against the Respondent herein, thereby initiating Corporate Insolvency Resolution Process as per the provisions of the Code against the Respondent. Thereafter, in order to amicably settle the dispute, the Respondent herein entered into Joint Settlement Agreements with its employees that had filed Petition for alleged **dues including that of the Petitioner herein**. The Petitioner herein vide an email dated 26<sup>th</sup> May 2021, authorized their advocate Mr. Udayasankar Samudrala to sign the Joint Settlement Agreement on her behalf. Email dated 26<sup>th</sup> May 2021 is annexed at page no. 24 of the Affidavit dated 02<sup>nd</sup> June, 2023 by the Respondent.
- d. Mr. Udayasankar Samudrala, being the authorised signatory, signed the Joint Settlement Agreement on behalf of the Petitioner on 27<sup>th</sup> May 2021 ("Joint Settlement Agreement"). In order to avoid any confusion, it is pertinent to mention that the Joint Settlement Agreement was signed by Mr. Udayasankar Samudrala and the Respondent herein on 25<sup>th</sup> May 2021 but in light of technical objections raised by the then

Interim Resolution Professional ("IRP") of the Respondent, the Joint Settlement Agreement was once again signed by Mr. Udayasankar Samudrala and Mr. K.K. Singh (Chairman and Managing Director of the Respondent) on 27<sup>th</sup> May, 2021. Joint Settlement Agreement dated 27<sup>th</sup> May, 2021 annexed at page no. 26 of the Affidavit dated 02<sup>nd</sup> June, 2023 by the Respondent). On 02<sup>nd</sup> June 2021, Mr. Udayasankar Samudrala informed the then IRP of the Respondent that *"in order to clear any doubt, the employees have once again authorised me to enter into settlement agreements including Joint Settlement Agreement dated 27th May, 2021"*.

- e. It is pertinent to note that under clause 11 of the Joint Settlement Agreement, the Petitioner along with other employees agreed to forthwith file an application for withdrawal of the Petitions filed by them against the Respondent, before this Hon'ble Tribunal, pursuant to which the Respondent would comply with its part to pay the amounts as agreed under the said Joint Settlement Agreement. In view thereof, the Petitioner herein had filed a Memorandum of Withdrawal to withdraw the above-captioned Company Petition on the ground of the aforesaid Joint Settlement Agreement entered into between the parties. A Copy of the withdrawal application along with filing receipt is annexed at Page No 38 of the Affidavit dated 02<sup>nd</sup> June, 2023 by the Respondent in support of its submission. Mr. Udayasankar Samudrala vide an email dated 24<sup>th</sup> September 2021, informed the Respondent's Advocates that as per the terms of the Settlement Agreement they have withdrawn the captioned

Company Petition and further requested them to pay the amounts as agreed under the Settlement Agreement.

- f. Based on the representation of the Petitioner and Authorized Representative of the Petitioner that they have withdrawn the captioned Company Petition, the Petitioner forwarded a copy of three demand drafts amounting to a total of Rs. 2,41,140/- (Rupees Two Lakhs, Forty-One Thousand, One Hundred and Forty Only) as contained under the Joint Settlement Agreement. The said Letter dated 24<sup>th</sup> September, 2021 enclosing the demand drafts issued in favour of the Petitioner were duly acknowledged and accepted by the authorized representative of the Petitioner.
- g. It is pertinent to note that upon request of Mr. Udayasankar Samudrala, the authorized representative of Petitioner, requested the Respondent to re-validate one demand draft of Rs. 50,000/- (Rupees Fifty Thousand Only). The Respondent herein on 30<sup>th</sup> September re-issued a revalidated draft in favour of the Petitioner. The Authorized Representative of the Petitioner, duly acknowledged and accepted the receipt of the same. Thereafter, on 12<sup>th</sup> January 2023, to the total shock and surprise of the Respondent, a newly appointed Advocate by the Petitioner herein falsely submitted before this Hon'ble Tribunal that they had not authorized their erstwhile Advocate to enter into any settlement agreement or received any amounts from the Petitioner. Upon hearing both the parties at length this Hon'ble Tribunal was pleased to direct both the Advocates of the parties to get directions from their respective clients.

- h. In view thereof, the Respondent herein, vide an email dated 16<sup>th</sup> February 2023, appraised the Advocates of the Petitioner of the said Joint Settlement Agreement entered into between the parties and attached the same, to bring on record true and correct facts. The Advocates for the Petitioner on 05<sup>th</sup> March 2023, replied to the email dated 16<sup>th</sup> February 2023, falsely stating that the Petitioner has never entered into any such Joint Settlement Agreement or received any amounts from the Respondent. Accordingly, in order to put on record true and correct facts, the Respondent by way of any email dated 06<sup>th</sup> April 2023, annexed all the relevant documents, that evidently prove that the parties have validly entered into the said Joint Settlement Agreement as on May 2021 and that the Petitioner has validly acted upon the terms contained under the Joint Settlement Agreement by filing a Memorandum of Withdrawal and accepting demand drafts towards amounts as contained under the said Joint Settlement Agreement.
- i. The parties cannot wriggle out of settlement agreement. It is settled law that once a party enters into a settlement agreement without any duress or coercion and have acted upon the same, by virtue of which position of parties with respect to the dispute changes, then in such cases on a later date neither of the parties can wriggle out of their obligation to perform their part of the performance as contained under the settlement agreement. It is therefore, submitted that the captioned Company Petition deserves to be dismissed at the first instance as the parties have entered into the said Joint Settlement Agreement and have

acted upon the terms contained therein. The Petitioner at this belated stage cannot be permitted to wriggle out of the settlement agreement after duly acknowledging and accepting monies from the Respondent on baseless and frivolous grounds of no authority granted.

- j. There is no specific clause in the Agreement which attracts interest on delayed payment. Therefore, the averment on levying the interest and issuing debit notes is wholly illegal and therefore, the same cannot constitute debt under the Code.

### **ANALYSIS AND FINDINGS**

5. We have heard the Counsel for the Applicant-Operational Creditor and the Respondent-Corporate Debtor. We have also gone through the pleadings and the records.
6. In this case, the Operational Creditor has claimed that the Corporate Debtor has committed a default of Rs. 6,13,580/- (Rupees Six Lakhs, Thirteen Thousand and Five Hundred and Eighty Only) of which principal outstanding in respect of her employment dues are INR 5,78,849/- and interest on the principal dues till 12<sup>th</sup> December, 2019 is INR 34,731/-. It is the case of Operational Creditor that she has not received the salaries, allowances and other dues and payables including the statutory provident fund and TDS that were deducted by her employer (i.e. the Corporate Debtor) to be deposited to the credit of the central government but have not been so deposited by the Corporate Debtor. On the other hand, it is the case of the Corporate Debtor that already a settlement agreement was entered by it with its

employees including the Applicant herein. However, the Operational Creditor has taken a stand that she had not authorised Advocate Mr. Uday Sankar Samudrala to enter into the settlement with the Corporate Debtor and also that she has not received any money pursuant to the purported settlement agreement from the Corporate Debtor.

7. The Joint Settlement Agreement dated 27<sup>th</sup> May, 2021 was entered into between the Adv. Udaysankar Samudrala on behalf of the Petitioners and Mr. Kamal Singh on behalf of the Corporate Debtor. Even if it is taken to be true that the Applicant herein had authorised her advocate to enter into a settlement with the Corporate Debtor, nothing has been brought on record of this Tribunal to show that the amount due to the Operational Creditor by the Corporate Debtor under the settlement agreement has been disbursed or paid to the account of or encashed by the Applicant. In Schedule I to the Settlement Agreement dated 27<sup>th</sup> May, 2021, the Corporate Debtor (through Mr. Kamal K. Singh) had agreed to settle the claim of the Operational Creditor of INR 6,13,580/- for INR 2,41,140/- to be paid in two tranches of INR 1,20,570/- each. On perusal of records, it seems that the Demand Drafts No. 336001 of INR 70,570/- dated 22<sup>nd</sup> July, 2021, Demand Draft No. 336078 of INR 1,20,570/- dated 23<sup>rd</sup> September, 2021, both drawn on Bank of Maharashtra by M/s. Rolta Resources Pvt Ltd and Demand Draft No. 265536 of INR 50,000/- dated 11.06.2021 drawn on IDFC First Bank were purportedly handed over to Mr. Uday Sankar Samudrala vide Letter dated 24<sup>th</sup> September, 2021 by M/s. Crawford Bayley & Co, Advocates & Solicitors, on behalf of Mr. K.K. Singh for the

Corporate Debtor. However, there is no evidence of its encashment by the Applicant. Further, the two demand drafts drawn on behalf of the Corporate Debtor totalling to INR 2,41,140/- shows admission of operational debt due and payable by the Corporate Debtor to the Operational Creditor herein. Though the Corporate Debtor has contested the claim of the Operational Creditor, but has not disputed the fact that the Operational Creditor was the employee of the Corporate Debtor and that she was not paid her salary from 01<sup>st</sup> July, 2019 to 16<sup>th</sup> August, 2019.

8. As the basic salary for the period from 01<sup>st</sup> July, 2019 to 16<sup>th</sup> August, 2019 crosses the threshold of INR 1 Lakh and that the Corporate Debtor had proposed to settle the claim of INR 6,13,580/- for INR 2,41,140/-, this Tribunal need not enter into the question whether the interest, leave encashment, TDS and provident fund constitutes the part of operational debts as claimed by the Applicant herein. The petition was filed on 02<sup>nd</sup> March, 2020 when the threshold u/s 4 of the Code was INR 1,00,000/-.
9. On the basis of the foregoing discussion, we are of the considered view that the Operational Creditor has been able to establish the existence of an Operational debt and its default having been committed by the Corporate debtor. The Application is also within time. Therefore, the Application deserves to be admitted. It is ordered accordingly, in the following terms.

**ORDER**

- a. **The above Company Petition No. (IB) -1316 (MB)/2020 is hereby admitted** and initiation of Corporate Insolvency Resolution -Process (CIRP) is ordered **against M/s. Rolta Defence Technology Systems Private Limited;**
- b. This Bench hereby appoints **Ms. Neha Jain Nemani**, Insolvency Resolution Professional, having Registration No: **IBBI/ IPA-001/ IP-P-02465/2021- 2022/13927** as the Interim Resolution Professional having email id :- [nehavkjain@gmail.com](mailto:nehavkjain@gmail.com) to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.1,00,000/- (Rupees One Lakh Only) towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; 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 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.

- e. 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.
  
- f. 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.

- g. 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, **this Petition is admitted.**

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**ANURADHA SANJAY BHATIA**  
**(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**