



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COURT – IV

1.

C.P.(IB)/270(MB)/2023

CORAM:

SHRI PRABHAT KUMAR
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON 10.04.2023

NAME OF THE PARTIES:

Rolta Private Limited

Vs

Varanium Cloud Limited

SECTION: 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

The Court is convened through Video Conference.

1. Mr. Nitin Kaskar i/b Adv. Akash Menon, Ld. Counsel for the Financial Creditor present.
2. This is a Petition filed by Rolta Private Limited (Financial Creditor) under Section 7 of the IBC against Varanium Cloud Limited (Corporate Debtor) for initiation of Corporate Insolvency Resolution Process (CIRP).
3. Upon perusal of the Petition, the Bench observed that the Financial Creditor has chronologically mentioned in the synopsis of the Petition as to how the Corporate Debtor owed to pay the sum demanded by the Financial Creditor, which states that –
 - a) 11.07.2019: Upon requests made by the Promoter and Managing director of the Corporate Debtor, an amount of ₹50,00,000/- (Rupees Fifty lakh only) was disbursed by the Financial Creditor to the Corporate Debtor in the form of a “Short Term Loan”.

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- b) 15.07.2019: An amount of ₹50,00,000/- (Rupees Fifty lakh only) was again disbursed by the Financial Creditor to the Corporate Debtor in furtherance to the amount disbursed earlier.
- c) 30.07.2019: Last tranche of the Short Term Loan of ₹50,00,000/- (Rupees Fifty lakh only) was disbursed by the Financial Creditor to the Corporate Debtor.
- d) 17.06.2020: Vide email sent on behalf of the Financial Creditor to the Promoter and Managing Director of the Corporate Debtor, the Financial Creditor requested the Corporate Debtor to return inter alia the amount of the Short Term Loan of ₹1,50,00,000/-.
- e) 23.06.2020: The Financial Creditor, once again by way of email, conveyed to the Corporate Debtor that it was awaiting the return of the Short Term Loan by 07.07.2020. However, no payment was received.
4. The date of default stated in the Part-IV of the Petition is 4th February, 2021. However, as per email dated 23.06.2020, the date of default shall be 08.07.2020. Both the dates fall under the period specified under Section 10A of the Code, which bars initiation of any proceeding u/s 7, 9 or 10 of the Code.
5. Counsel for the Petitioner submitted that the Financial Creditor had issued two demand notices i.e. on 30.01.2021 and on 25.01.2022 and pleaded that the latest date of default should be taken as date of last Demand Notice i.e. 25.01.2022 and this date falls outside 10A period. We feel that the date of default is that when the debt become dues and is not paid. In this case, the

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date of default is stated as 04.02.2021 as per Part-IV. Alternatively, as per email of the Applicant, it is 08.07.2020. The date of default cannot be shifted merely because another Demand Notice was served later on the Corporate Debtor. Accordingly, we find that this Petition is not maintainable in terms of Section 10A of the Code. Therefore, Petition C.P.(IB)/270(MB)/2023 is hereby **dismissed** as not maintainable.

Sd/-
PRABHAT KUMAR
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)