

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. No. 2707/I&BP/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Mr. Karanjit Singh Chanana

c/o Rajdeep Samudrala, Advocate, Law
Chambers of Samudrala, 2, Rewa Chambers,
31, New Marine Lines, Mumbai – 400 020

.... Petitioner

v/s

Rolta Defence Technology Systems Private
Limited

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

.... Corporate Debtor

Order delivered on: 11.11.2019

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

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. Rajdeep Samudrala, Advocate

For the Corporate Debtor: Shadab Jan a/w Komal Khushalani, Advocates i/b
Crawford Bayley & Co.

Per: V. Nallasenapathy, Member (T)

ORDER

1. This company Petition is filed by Mr. Karanjit Singh Chanana (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Rolta Defence Technology Systems Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 28.01.2019 in making payment of Rs. 22,09,910/- including interest @18% p.a., 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 counsel for the Petitioner submits that the Petitioner was appointed as a Principal Group Manager (L2) of the Corporate Debtor vide appointment letter dated 23.04.2018 with a remuneration of Rs. 3,50,000/- p.m. (including allowances) by

the Corporate Debtor. It is submitted that the Petitioner served the Corporate Debtor from 23.04.2018 to 28.01.2019 and he had to leave the services on 28.01.2019.

3. On 28.01.2019, the Petitioner was relieved from the services of the Corporate Debtor and a letter to that effect was issued by the Corporate Debtor which has been annexed to the petition at page no. 24. However, the arrears of salary and other retirement benefits were not paid to the Petitioner.

4. On 28.05.2019 the Petitioner issued a demand notice to the Corporate Debtor demanding a sum of Rs. 22,09,910/- including interest @18% p.a. under section 8 of the Code. However, there was no reply from the Corporate Debtor for the Demand Notice and the Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no notice of dispute given by the Corporate Debtor.

5. The Petitioner relying on a notice dated 14.12.2018 issued by the Corporate Debtor, which reads as below, claimed interest @18% p.a.:

"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."

6. The Petitioner enclosed his bank account statement to show that he has not received the salary/retirement dues from the Corporate Debtor after 20.12.2018.

7. The Corporate Debtor filed a reply to the petition and raised the following contentions which are dealt with:

- a. It is submitted that the application is incomplete and the Petitioner failed to produce the relevant documents. We have gone through the petition and this is only a salary claim and the required details are given and hence this objection fails.
- b. It is submitted that the statement of account produced by the Petitioner with his bank is not certified in terms of Bankers Books Evidence Act, 1891 (BBE Act) and hence this statement should not be given any credence. In support of this contention the counsel for the Corporate Debtor relied on the judgement of the Hon'ble Supreme Court in "*Swiss Ribbons Pvt. Ltd. and Anr. vs Union of India and Others*" (para 55) (2019) 4 SCC 17, to say that copies of entries in a bankers book in accordance with BBE Act is an evidence of financial debt. The judgement referred supra only speaks about the financial debt and the issue here is regarding operational debt and hence the reliance on this judgement is of not avail to the Corporate Debtor. The Petitioner has produced the statement of accounts to show that he has not received any payment from the Corporate Debtor after 20.12.2018. It is not the case of

the Corporate Debtor that the salary dues were paid to him and the Petitioner is making a false claim. The Corporate Debtor has not denied the liability but taking a hyper technical objection saying that there is no certificate under BBE Act. In view of the fact that this is only a salary claim the objection regarding not obtaining of certificate under BBE Act does not hold water.

- c. The Corporate debtor contended that there is no proof of debt. This contention of the Corporate Debtor is unacceptable for the reasons that the Petitioner was appointed by the Corporate Debtor, he has worked for some time, subsequently relieved in a proper manner and proofs to that effects were provided in the petition. The Corporate Debtor has not come out with any material to show that the salary/retirement benefits were paid.

8. On hearing the arguments for both the sides and on the basis of the materials provided with Form 5, this Bench is of the view that debt and default are established and the petition deserves admission.

9. One Mr. Atul Shah, office at Mahavir Dham – A/1A, 48/51, Garodia Nagar, Ghatkopar (east), Mumbai – 400 077; having Registration No. IBBI/IPA-001/IP-P01102/2017-18/11795 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

10. 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 application 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 11.11.2019 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) that this Bench hereby appoints Mr. Atul Shah, office at Mahavir Dham – A/1A, 48/51, Garodia Nagar, Ghatkopar (east), Mumbai – 400 077; having Registration No. IBBI/IPA-001/IP-P01102/2017-18/11795 as Interim Resolution Professional to carry the functions as mentioned under the Code.

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

SD/-

V. Nallasenapathy
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)