

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

C.P. (IB) No. 4375/NCLT/MB/2018
Under Section 7 of the I&B Code, 2016

In the matter of:

**Value Partners Greater China High Yield
Income Fund &
Pinpoint Multi-Strategy Fund**

...Financial Creditors / Applicants

V/s

Rolta India Limited

...Corporate Debtor / Respondent

Order Dated: 22nd October 2019

Coram: Hon'ble Member (Judicial): Mr V. P. Singh
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Advocate Dhananjay Kumar, Advocate Surbhi Pareek and Advocate Anush Mathkar

For the Respondent: Advocate Sudipto Sarkar, Advocate Prateek Sekseria, Advocate Shlok Parekh, Advocate Komal Khushalani and Advocate Parita Dave

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being C.P. (IB) No. 4375/NCLT/MB/2018 filed by **Value Partners Greater China High Yield Income Fund and Pinpoint Multi-Strategy Fund**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Rolta India Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).



2. The Application is filed claiming a total default of USD 14,60,50,963/- equivalent to ₹1060,11,53,004/- (Rupees One Thousand Sixty Crore Eleven Lakh Fifty Three Thousand and Four Only) including interest as on 13.11.2018. The Application is filed by Ms. Kathleen Margaret Berkeley who is authorised to file this Application vide Power of Attorney dated 08.11.2018.
3. At the outset it is observed that the Corporate Debtor viz. Rolta India Limited, is Parent Company and Guarantor to the Principal Borrowers viz. Rolta LLC and Rolta Americas LLC (Hereinafter referred to as "Principal Borrowers").
4. It is submitted that, Rolta LLC vide an Indenture dated 16.05.2013 ("2013 Indenture") issued Senior Notes ("2018 Notes") for USD 200,000,000 (Two Hundred Million United States Dollars Only), bearing interest 10.75%, in favour of DB Trustees Limited (as Trustee and Security Agent acting on behalf of the noteholders). The final maturity date of the 2018 notes was 16.05.2018. Further, Rolta Americas LLC vide an Indenture dated 24.07.2014 ("2014 Indenture") issued Senior Notes ("2019 Notes") for USD 300,000,000 (Three Hundred Million United States Dollars Only), bearing interest of 8.875%, in favour of Citicorp International Limited (as Trustee and Security Agent acting for the benefit of the noteholders). The final maturity date of the 2019 notes was 24.07.2019. The copy of said Indentures are annexed to the Application.
5. It is submitted that, 2013 Indenture and 2014 Indenture are together referred to as "Rolta Indentures"; And 2018 Notes and 2019 Notes are together referred to as "Rolta Notes".
6. It is submitted that, Cede & Co., being the nominee of Depository Trust Company (DTC), was the Holder on record of the Rolta Notes. The copy of said Notes are annexed to the Application.



7. It is submitted that, as per the terms of the Rolta Indentures, the Corporate Debtor being the parent company of Rolta LLC & Rolta Americas LLC, was required to issue a corporate guarantee in favour of each noteholder guaranteeing the due and punctual payment of all amounts payable under the Rolta Notes and Rolta Indentures. Accordingly, the Corporate Debtor issued parent guarantee dated 16.05.2013 (2013 Parent Guarantee) & parent guarantee dated 24.07.2014 (2014 Parent Guarantee) in favour of noteholders. The copy of said parent guarantees are annexed to the Application.
8. It is submitted that the Applicants were specifically authorised by Cede & Co. vide authorisation letters dated 10.10.2018 & 18.10.2018 to take any action, which Cede & Co. being the Holder of Notes is entitled to take, in respect of the Rolta Notes. The copy of said authorisation letters are annexed to the Application.
9. It is submitted that, the Principal Borrowers were liable to pay interest as per the Rolta Indentures and Rolta Notes. However, the Principal Borrowers failed to comply with the interest payment obligations under the Rolta Indentures and Rolta Notes and therefore, the Applicants vide their notice dated 24.04.2018, 10.10.2018 & 18.10.2018 (Acceleration Notices) sent to Principal Borrowers, accelerated the payment of full principal amount along with interest under Rolta Notes. Accordingly, all amounts payable under the Rolta Notes became immediately due and payable as on the date of acceleration notices. It is submitted that the Principal Borrowers failed to comply with the demand made by the Applicants under the acceleration notices. It is further submitted that, as per the parent guarantees, in case of failure of Principal Borrowers to pay the principal, premium and interest on Rolta notes, the Corporate Debtor was liable to pay the said amounts. Therefore, the Applicants invoked the parent guarantees vide their notices dated 24.05.2018 and 29.10.2018 and called upon the Corporate Debtor to pay the outstanding debt amount within 7 days from receipt of invocation notice. It is submitted that, the



Corporate Debtor failed to make the necessary payment to the Applicants within the time prescribed under the invocation notices and also failed to reply to the said notices.

10. The Application is filed on 15.11.2018. The Corporate Debtor did not file its Affidavit in Reply however, filed a MA No. 2216 of 2019 on 17.06.2019 and raised following contentions. The Corporate Debtor contended that the Applicants suppressed facts that, they had instituted summary proceedings against the Corporate Debtor in respect of the same subject matter, which are pending before the Hon'ble Supreme Court of State of New York. The Applicants also did not disclose the Interim Order passed by the Hon'ble Supreme court of State of New York rejecting the motion of the Applicants which operates as an issue estoppel against the Applicants. The Corporate Debtor contended that, the Parent Guarantees could have been invoked only by the Trustees and its assignee or Holder, and the Applicants are neither of them. The Corporate Debtor further contended that the Applicants have not produced any documents in support of their plea and merely rely upon authorisation letters which are non-conclusive and inadequate to establish that the Applicants are beneficial holders. The Corporate Debtor also contended that the right to sue under the Rolta Indentures has been specifically assigned to the Trustees, and neither the Trustees nor the Holders have granted any power or authority to the Applicants to file the Application. The Corporate Debtor has therefore denied the Power of Attorneys authorising the representative of the Applicants to file the present Application. The Corporate Debtor further contended that the enforcement of parent guarantees would be contrary to the public policy of India as it contravenes the provisions of FEMA Act. The Corporate Debtor lastly contended that the Applicants have not annexed any copies of Account Statements under the Bankers Books Evidence Act evidencing the default committed by the Corporate Debtor or the Principal Borrowers.

11. We have heard the parties and perused the records.



12. On perusal of the documents submitted by the parties, this bench has observed that:

- i. It is evident from the pleadings that the Corporate Debtor, being the Parent Company, has nowhere denied the execution of Rolta Indentures or Rolta Notes. Further, the Corporate Debtor has admitted that DB Trustees Limited and Citicorp International Limited were the Trustees under the respective Rolta Indentures. The Corporate Debtor has also admitted that Cede & Co. was the Holder on record of the Rolta Notes.

Further, Section 6.07 of the Indentures reads as follows:

"Rights of Holders to Receive Payment. Notwithstanding anything to the contrary in this Article 6, the right of any Holder of a note to receive payment of the principal of, premium, if any, or interest on, such note or any payment under any Note Guarantee or to bring suit for the enforcement of any such payment, on or after the due date expressed in the notes, shall not be impaired or affected without the consent of such Holder."

Therefore, on perusal of the above section it is pertinent to note that the Holder, Cede & Co., had right to institute suit for enforcement of payments under the Notes.

Also, Section 2.06(f) of the Indentures provides for the following:

"The registered holder of a Global Note may grant proxies and otherwise authorise any person, including Agent members and persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Indenture or the Notes."

Therefore, on perusal of the above section it is evident that the Holder, Cede & Co., had the right to authorise any



person to take any action which the Holder is entitled to take.

Therefore, the Authorization Letters issued by Cede & Co. specifically authorising the Applicants to take any action which the Holder was entitled to take, makes it distinguishingly clear that the Applicants had the rightful authority to enforce any payment under the Notes and also to invoke the guarantees in respect of the obligations of the issuers of notes. Thus, the accelerations notices and guarantee invocation notices were rightly issued by the Applicants having proper authority to do so. Therefore, in pursuance of the said authority, it will be right to say that the Applicants having stepped into the shoes of the Holder of Notes are Financial Creditors and the contentions otherwise of the Corporate Debtor are therefore denied in toto. Further, it is also observed that the Corporate Debtor had itself referred the Applicants as Holders of Senior Notes in its Writ Petition filed before the Hon'ble Supreme Court of India.

- ii. Further it is observed that, I&B Code being a Special Act, there is no bar on the Adjudicating Authority to initiate corporate insolvency resolution process if any other proceedings are pending before any court with respect to the same subject matter. The proceedings under the I&B Code are independent. Therefore, contention of the Corporate Debtor that if a foreign court passes an interim order rendering prima facie fair adjudication, due respect and weightage ought to be given to such orders in the light of principle of comity of courts is not tenable. Further, it is held that the Applicants being Financial Creditors have filed the requisite documents which are required under the provisions of Section 7 of I&B Code.
- iii. Also, the contention of the Corporate Debtor that the parent guarantees are not enforceable being violative of provisions



of Foreign Exchange Management Act, 1999 holds no water, as the violation has been done on the part of the Corporate Debtor and therefore, the Corporate Debtor cannot be allowed to take advantage of its own faults.

- iv. Further, as per section 5(7) of the I&B Code, a financial creditor is a person to whom a financial debt is owed, and financial debt is defined under section 5(8) as follows:

"financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–

...

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

...

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;

Therefore, in the circumstances of the present case, the debt arising on account of Notes issued and Guarantees invoked in respect thereof, amounts to financial debt.

13. Also, in the facts and circumstances of the present case, it would be relevant to rely upon **"Innoventive Industries Ltd. Vs. ICICI Bank and Anr. – (2018) 1 SCC 407"**, wherein the Hon'ble Supreme Court observed that:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the



meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. **The Code gets triggered the moment default is of rupees one lakh or more (Section 4).**

...

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor — it need not be a debt owed to the applicant financial creditor.

...

It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the Corporate Debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted." (emphasis supplied)

14. Therefore, upon hearing the arguments and on perusal of the documents this bench has come to the conclusion that, financial assistance was granted to the subsidiary companies of the Corporate Debtor against the consideration for the time value of money, as interest was payable on the said amounts. Also, no evidence is brought on record to prove that the loans were not defaulted by the borrowers. It is also noted that the Acceleration



Notices and the Guarantee invocation Notices were not replied to. Further, the Corporate Debtor is parent guarantor to its subsidiary companies for the due payment of the loan amount. The Corporate Debtor also has not disputed the Rolta Indentures and Rolta Notes and has nowhere raised a contention that the loan amount was not received by its subsidiaries. Further, the Principal Borrowers failed to pay the interest as per the Indentures and Notes which is also not disputed by the Corporate Debtor in its pleadings. Therefore, an amount of more than ₹1,00,000/- is due and payable and there is default by the Corporate Debtor in repayment of the loan amount. Hence, all the miscellaneous contentions raised by the Corporate Debtor are hereby rejected.

15. Thus, the debt and default of the Corporate Debtor have been established and the Application deserves to be admitted.
16. The Applicant has proposed the name of Shailendra Ajmera, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00304/2017-18/10568] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
17. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh is due and payable against the Corporate Debtor and its default is also proved. Application is within the limitation. Accordingly, the Application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.



ORDER

This Application filed under Section 7 of I&B Code, 2016, filed by **Value Partners Greater China High Yield Income Fund and Pinpoint Multi-Strategy Fund**, Financial Creditor / Applicant, against **Rolta India Limited**, Corporate Debtor for initiating corporate insolvency resolution process is admitted.

We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in 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 the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code 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 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 of I&B Code or passes an order for the liquidation of the Corporate Debtor under section 33 of I&B Code, 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 I&B Code.

VI. That this Bench appoints **Shailendra Ajmera**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P00304/2017-18/10568]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

18. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today**

Sd/-

RAJESH SHARMA

Member (Technical)

Sd/-


V. P. SINGH

Member (Judicial)

22nd October 2019



Certified True Copy
Copy Issued "free of cost"
On 07/11/19


Assistant Registrar
National Company Law Tribunal Mumbai Bench