

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 1691 OF 2023**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

**M/s PCI Geomatics Enterprises Inc.**

...Applicant

Vs.

M/s Rolta India Limited

...Respondents

In the matter of

C.P.(IB) No. 530/MB/2020

Union Bank of India

**Financial Creditor**

Vs.

M/s Rolta India Limited

**Corporate Debtor**

*Order delivered on: 02.01.2024*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

*Appearances*

For the Applicant : Mr. Yudhishtir Sharma, Advocate  
For the RP : Ms. Aakansha Nehra, Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This Application IA no. 1691/2023 is filed under section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) by M/s PCI Geometrics Enterprises Inc. (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Rolta India Limited (“Corporate Debtor”) for admission claim alongwith interest and for order seeking termination of contract in case these amounts are not paid by the Corporate Debtor. The Applicant has prayed the following :
  - a. An order to admit claim of interest of USD 546,863, which is @ 1.5% p.m. on admitted bills of USD 420,000;
  - b. An order to admit claim of bill No. 10930 for USD 212,500, which is within the contracted period up to August 11, 2018 and with interest @ 1.5% p.m. i.e., USD 168,938;
  - c. An order to admit the claim where the agreement was not extended but service was provided from August 11, 2018 to January 19, 2023 (CIRP date) invoice price of USD 1,925,416 and interest of USD 426,862 @ 1.5% p.m.; and
  - d. An order to terminate all the agreements with corporate debtor in case of non-payment/admission of claims.

2. The applicant had filed a case No. CP(IB)1320/(MB)/2022 against M/s Rolta India Limited as operational Creditor under section 9 of Insolvency and Bankruptcy code on 31.10.2022, the same was listed before NCLT, Mumbai Bench-V and the notice was issued and delivered on 17.01.2023, but the Corporate Debtor was admitted into CIRP on 19.01.2023 in another Petition no. CP(IB) 530/2020 and Ms. Mamta Benani was appointed as Interim Resolution Professional, later on confirmed as the Resolution Professional. Accordingly, the Petition of the Applicant was declared as infructuous on 30.3.2023.

2.1. The Applicant filed claim in Form B on 25.02.2023 claiming total amount of USD 37,00,579/-, which included USD 11,42,663/- as interest @ 1.50% p.m. The details are stated as follows –

- a. The extended agreement between petitioner and respondent was ended on 11.08.2018 and outstanding bills 10562 for USD 417,500, out of this part payment was made after two months from the due date for USD 207,500, so outstanding balance of USD 210,000 and Invoice No. 10685 for USD 210,000;
- b. bill No. 10930 for USD 212500 for second half of the year;
- c. bill No. 10931 for USD 427,500, 10932 for USD 432,500, 10933 for USD 437,500 and 10934 for USD 442,500 for 4 years from August 2018 onwards;
- d. The bill No. 10935 for USD 222,500 for the first half year i.e., from August 11, 2022 to February 10, 2023, the

petitioner deducted for one month for USD 37084 from January 11,2023 to February 10, 2023.

e. Interest amounting to USD 11,42,663/-.

2.2.It is the case of the applicant that as per letter related to Intimation of List of Creditors addressed to BSE & NSE dated 14.03.2023 and copy marked to petitioner through email dated 15.03.2023 and shown in Annexure 8 against item No. 58 claim submitted showed as USD 3,700,579 correctly but the claim accepted only for invoice price of USD 420,000 without any interest.

2.3.The Applicant has stated that the bills after August 2018 were issued under deemed agreement up to February 2023, but claimed submitted only up to CIRP date i.e., January 19, 2023, because the service of maintenance was continued. That from 11.08.2018 to 19.01.2023 (CIRP date) the service was provided and regular invoices were also submitted through bill No. 10931 for USD 427,500, 10932 for USD 432,500, 10933 for USD 437,500 and 10934 for USD 442,500, The bill No. 10935 for USD 222,500 for the first half year i.e., from August 11, 2022 to February 10, 2023, we have deducted for one month for USD 37084 from January 11, 2023 (CIRP date) to February 10, 2023.

2.4.After admitting the amount of USD 420,000, invoice amount USD 2,137,916 along with interest USD 1,142,663 are due, because the respondent company sent an acknowledgement of debt on 17.04.2020 to petitioner company that "*I do acknowledge that Rolta has an outstanding payment that is due to PCI as per the terms of the Service and Maintenance agreement. On 30.04.2020, the*

respondent company sent an acknowledgement of debt by email as an attachment on letter head of the Respondent Company to the Petitioner Company that "*\$420,000 remains to be paid. It is important to note that we fully intended to settle this payment. We are willing to entertain renewal of the maintenance and support agreement from this through 2023 (an additional 5 years). That payment 2017-18 would be made quickly once agreement was reached.*" Hence presently total amount along with interest is USD 3,208,579 is still pending to be admitted as claim by RP.

2.5. That legal notice dated 16.03.2023, issued for non-admission of balance amount of USD 3,280,579/-, was sent to Respondent on 16.03.2023 and also sent hard copy of the legal notice by speed post No. ED117677615IN dated 17.03.2023 was delivered as per track record on 20.03.2023.

2.6. In the matter of *D F Deutche Forfait AG v. Uttam Galva Steel Ltd., 2017 SCC OnLine NCLT 546 NCLT, Mumbai* observed that there is also some time value of money for an "operational debt" as goods or services are supplied against money as consideration. NCLT noted that "*On commercial side, the operational creditor claiming interest is quite normal and justifying, after all, business always runs keeping in mind the time value of money*".

3. The Corporate Debtor filed the reply stating that originally a claim was filed on 31.01.2023; however, the same had many defects and numerous communications were exchanged. An amount of USD 420,000/- was admitted in light of letter dated 30.04.2020 and the

agreement between the parties has no clause stipulating payment of interest on the delayed settlement of invoices. Since, the Resolution Professional has limited power to collate and verify the claims and the contract between the parties expired in 2018 and no written contract was executed thereafter, the claim for the period after expiry of contract could not be admitted on basis of 'implied contract' being argued by the Applicant. Further, the claim was supported by invoices, which had no acknowledgement or proof of performance of its contractual obligations.

4. We have heard the learned counsel and perused the material available on record.

4.1. It is undisputed fact that the agreement for maintenance and support services got expired in August, 2018 and there was no extension of the agreement thereafter. Though, the email communications suggest that the Respondent was willing to extend the Agreement for further period of 5 years, however such renewal was contemplated on revised terms, which were not agreed by the Applicant. Hence, no agreement extending the expired agreement could come in place.

4.2. It is the case of the Applicant that it continued to provide the maintenance and support services even after expiry of the agreement and this brings an implied contract between the parties in existence. However, we find that no material in the form of any communication or service delivery/requests has been placed on record to substantiate that any service was rendered by the Applicant after expiry of agreement and in August, 2018. E-mail dated 17.04.2020 from the Corporate Debtor's official states that "*The Company has been undergoing a restructuring process that will enable us to settle the matter. I would*

*like to updated you on where we are with respect to this.” This email further states that “ I would also like to take the opportunity to discuss the future options for the Services and Maintenance Agreement.” Further email dated 30.4.2020 from the same official to the Applicant states that*

*“ We said if we could account for the unused hours and use those in future years, we were open and ready to sign another multi-year Services and maintenance agreement that would extend the agreement and provide even more payment over a longer period of time.*

*Specifically, we discussed the following regarding Support Hours needed by Rolta India :*

- a) We reviewed the current situation with Terry. 482 hours roll over into the 5<sup>th</sup> years of the current contract. 1,250 additional support hours (& 170K) are specified in the current contract. Rolta need is 500 hours for 2017-18. We were also willing to entertain a renewal of the Maintenance and Support Agreement from then through 2023 (an additional 5 years) with Maintenance at \$250K per year and Support at 500 hours per years. In essence this was new \$1.62M commitment. The trade-off of PIC would be the 1,250 hours that would not be realized in 2017-18.*
- b) Terry asked that the current contract obligations be considered separately from the renewal of the contract for the next 5 years. We told Terry that we needed to work through both pieces and that payment for 2017-18 would be made quickly once agreements were reached.*
- c) Terry’s primary concern on the call was the reduction in hours as we had averaged closer to 800+ hours in previous*

*years. Consequently 500 hours seemed low to Terry. We explained to Terry that our team believed that 500 hours would be sufficient, and this reflects the RIL team's accomplishment in becoming increasingly skilled and proficient. Plus, we also noted that 500 hours is a minimum. If more hours were needed, they would be scheduled when the need arises. Terry remarked that there was probably a way to adjust the hours required in the 5<sup>th</sup> year of the current contract if the support hours going forward (through 2023) were reasonable.*

*While we cannot accept your proposal, we would like to resolve this by working out with you the actual hours used during the last year of the Services & Maintenance agreement and plan for another multi-year Services & Maintenance agreement that would entail settling the amount that is owed to you.”*

4.3. Though e-mails suggest that the parties were negotiating the renewal of Maintenance and Support Agreements, but agreement came to be concluded. However, we find that these communications do not convey that services were rendered by the Applicant under the expired agreement for the period after August, 2018. We further find that the Respondent were eager to renew the agreement for subsequent years also provided they agree on minimum hours and rate. It also follows from the statement ‘*we would like to resolve this by working out with you the actual hours used during the last year of the Services & Maintenance agreement and plan for another multi-year Services & Maintenance agreement*’ that services may be continued by the Applicant and the same may have been consumed by the Respondent even

after expiry of agreement in August, 2018, but no tangible evidence has been brought on record by the Applicant to substantiate this claim.

4.4. We find from the email dated 19.8.2022 to the Applicant from the CMD of the Respondent stating that -

*“Please note that all discussion we had at your request starting from your email dated 5<sup>th</sup> April, 2022 were based on good faith and your clear assurance time and again in your discussions and emails that you want to move forward buying past disputes of maintenance agreement dated 11<sup>th</sup> August, 2013. If that was not the case, then we at Rolta would not have spent tremendous efforts in trying to restart relationship in a transparent manner, through various calls and emails between us and our respective teams in the last 4+ months.*

*I immediately suspend all negotiations and discussions between us. In view of this , I am not replying to your two emails of 18<sup>th</sup> August, 2022.*

4.5. The Applicant wrote a letter dated 18<sup>th</sup> August, 2022 stating that *“While Rolta continues to enjoy benefits under some/all of the Agreement, Rolta has failed to perform under the Agreements and has been negligent in paying the associated maintenance and Support invoices outstanding from 2017 and 2018 for services PCI provided. The outstanding invoices are attached for your reference”*. The letter further demanded interest for delayed payment of invoices for 2017 & 2018 amounting to USD 185,850/- and USD 148,050/- and informed of legal consequences in case of failure to pay. We find that this letter dated 18.08.2022 does not speak of payments, if any claimed for the period from 2019, 2020, 2021 or 2022. This contradicts the claim of the Applicant that the

Respondents had obligation to pay for dues for year 2019, 2020, 2021, or 2022.

- 4.6. Since there are conflicting evidences on record, and none of the evidence has been placed substantiating the rendition of services i.e. number of hours spent under the expired agreement in the period following the expiry, we have no hesitation to hold that the Applicant has failed to substantiate its claim for the period from August 2018 onwards. Since, the Resolution Professional has to proceed on basis of records and books available with her, we do not find any infirmity in her admitting the claim for USD 420,000/- only. Since, there is no stipulation in the agreement about payment of interest, we are of considered view that the stipulation over invoices, being an unilateral act on the part of the Applicant, can not fasten obligation to pay interest on the delayed payment.
- 4.7. As regards prayer for termination of the agreement, we find that email dated 19.8.2022 from the CMD caused a thaw in the relationship and in the absence of any concluded understanding in so far as extension or renewal of agreement is concerned, the question of its termination through our order does not arise.
5. In view of the foregoing, IA 1691/2023 is dismissed and disposed of accordingly.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)