

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

CP (IB) No.1122/MB-V/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Dr. Sohrab Rustom Bhot

...Operational Creditor/Applicant

V/s

**Rolta Bi & Big Data Analytics Private
Limited**

[CIN: U29253MH2014PTC255827]

...Corporate Debtor/Respondent

Order Dated: 13.10.2023

Coram:

Ms. Reeta Kohli : Hon'ble Member (Judicial)
Sh. Sanjiv Dutt : Hon'ble Member (Technical)

Appearances:

For the Petitioner(s) : Adv. Udaya Sankar Samudrala
For the Respondent(s) : Adv. Shadab S. Jan

ORDER

Per: Ms. Reeta Kohli, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 1122/MB/C-V/2021 filed by **Dr. Sohrab Rustom Bhot**, the Operational

Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **Rolta Bi & Big Data Analytics Private Limited**, Corporate Debtor.

2. The Operational Creditor is a former employee of the Corporate Debtor. The Application is filed by Operational Creditor claiming total outstanding amount of Rs.2,35,38,311/-.

Submissions of the Operational Creditor:

3. The case of the Operational Creditor is as under:
 - 3.1 The Petitioner was the former employee of the Corporate Debtor and served the with the Corporate Debtor from 06.05.1991 to 31.01.2019.
 - 3.2 The Petitioner submitted that the Operational Creditor was appointed on 06.05.1991 vide appointment letter dated 19.04.1991 (Exhibit – C) and later was transferred to a newly formed subsidiary i.e. Rolta Bi & Big Data Analytics Private Limited on 31.01.2017 vide transfer letter dated 31.01.2017 (Exhibit – D).
 - 3.3 The Petitioner further submitted that during his tenure, he was not paid regular salaries and, therefore, resigned from the Corporate Debtor on 11.10.2018 vide resignation letter dated 11.10.2018 (Exhibit E) and was relieved on 31.01.2019 after serving the full notice period vide relieving letter dated 31.01.2019 (Exhibit F).

-
- 3.4 It is submitted that the Petitioner was not paid salary and allowances for the month of November 2018, December 2018 and January 2019 for which the Corporate Debtor vide notice dated 14.12.2018 (Exhibit – H) had agreed to make additional payment at the rate of 18% p.a. on overdue salaries effective from October, 2018. Thereafter, the Corporate Debtor issued a full and final settlement report dated 23.07.2019 (Exhibit G) to the Operational Creditor confirming their obligation to pay the outstanding dues.
4. Even after the repeated follow ups, the Operational Creditor failed to make payment of the outstanding dues to Petitioner. Therefore, the Petitioner issued Demand Notice in Form 3 dated 27.09.2021 (Exhibit B) for a sum of Rs.2,35,38,311/- (including interest) payable within 10 days from the date of receipt of the Notice. However, the Corporate Debtor neither paid the Operational Creditor nor replied to the said Demand notice dated 27.09.2021. Hence, this petition.

Reply of the Corporate Debtor:

5. The Corporate Debtor has filed its Affidavit-in-reply dated 20.02.2023 and has denied all the allegations, statements, contentions and averments made by the Petitioner. The Corporate Debtor further submits that:
- 5.1 The alleged claim of the Petitioner is not above the threshold limit of Rs. 1 crore. The Petitioner in order to pressurize the

Respondent has included amounts towards interest, TDS, incentives and reimbursements that are not payable to the Petitioner. Further, the inclusion of interest in computing the amount in default without an agreement or contract between the parties is incorrect and bad in law. Therefore, the present petition deserves to be dismissed.

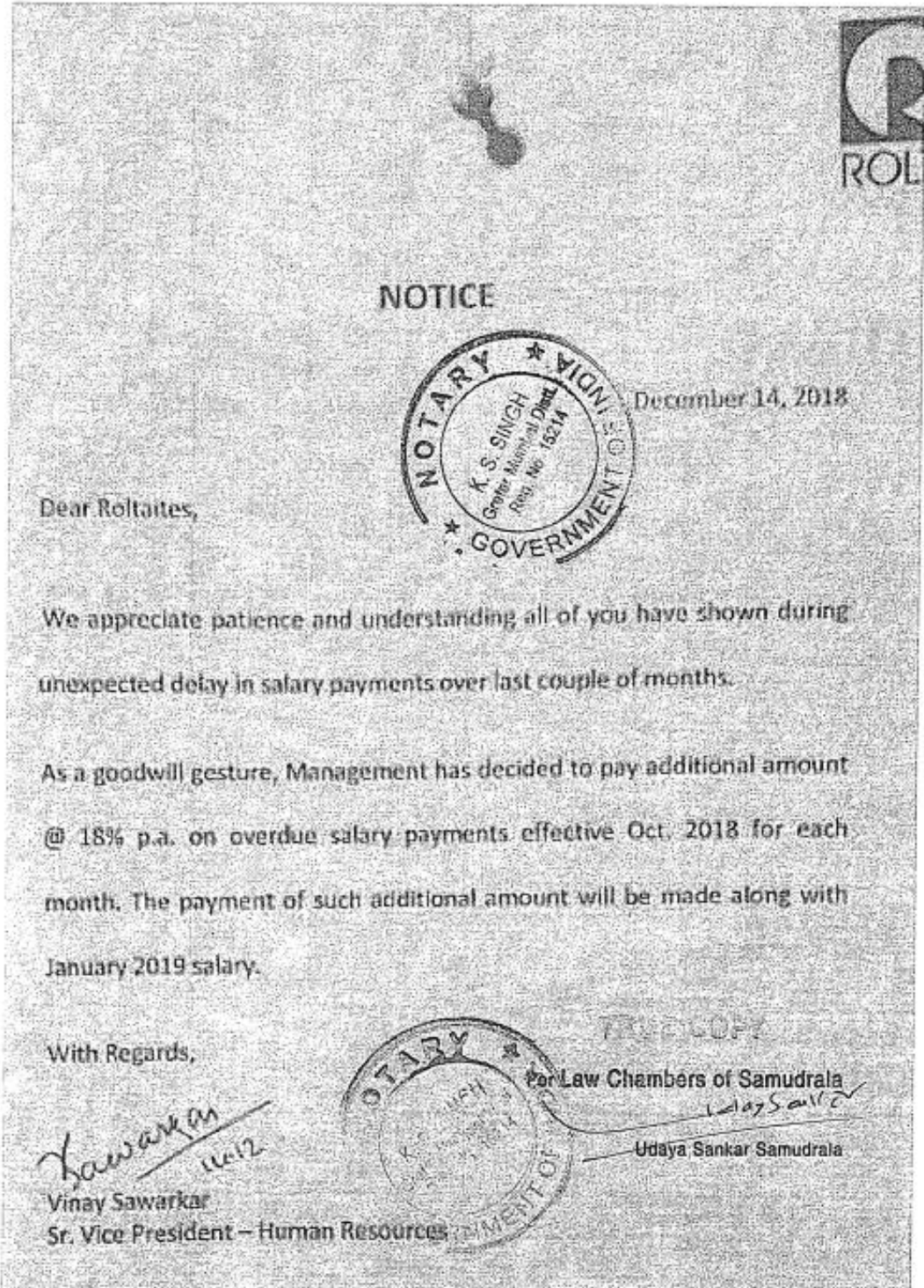
- 5.2 The Demand Notice dated 27.09.2021 (Exhibit – B) issued by the Petitioner is defective and bad in law as it suffers from false information and suppression of vital and material facts. The Respondent submits that the interest claimed by the Petitioner in the default amount is neither due nor payable by the Respondent as there is no contractual agreement between the parties. In addition to the above, the Demand Notice dated 27.09.2021 (Exhibit – B) does not contain the documents the Petitioner has relied upon. Therefore, the demand notice is defective and bad in law.
- 5.3 The Corporate Debtor submitted that the application filed by the Petitioner is incomplete as the Petitioner has failed to submit any proof of debt/default.
- 5.4 The Respondent submits that the amount claimed of Rs. 2,35,38,311/- includes claims for the head which do not constitute operational debt. More particularly, the claims towards statutory dues payable directly to the respective authorities, claims which are in the nature of perquisites or

gratuitous payment do not constitute an Operational Debt qua the Operational Creditor.

- 5.5 The Corporate Debtor further submits that the Notice dated 14.12.2018 (Exhibit H) relied upon by the Petitioner, wherein the parties have agreed to make payment of interest was issued by the Respondent as a goodwill gesture and, therefore, is not binding on the Petitioner.

Findings:

6. We have heard the arguments of the Learned Counsels and perused the materials available on record.
7. It is an undisputed fact that the Petitioner was the former employee of the Corporate Debtor and was appointed on 06.05.1991 vide appointment letter dated 19.04.1991 (Exhibit – C). The Petitioner served the Corporate Debtor from 06.05.1991 to 31.01.2019. However, due to the non-payment of salary and allowances for the months of November 2018, December 2018 and January 2019, the Petitioner resigned on 11.10.2018 vide resignation letter dated 11.10.2018 (Exhibit E) and was relieved on 31.01.2019 after serving the notice period.
8. Pursuant to the above, the Corporate Debtor vide notice dated 14.12.2018 (Exhibit – H) had agreed to make additional payment at the rate of 18% p.a. on overdue salaries effective from October, 2018. The relevant extract of the notice is annexed as under :–



9. However, due to non – payment of dues, the Corporate Debtor further issued a *Final Settlement Report* dated 23.07.2019 (Exhibit G) which serves as acknowledgement of dues by the Respondent. The present Petition is filed on 08.11.2021 which is thus well within the period of limitation.
10. The preliminary issue which arose before the Bench is:
- i. Whether the interest claimed is maintainable? and
 - ii. Whether the instant Petition meets the threshold limit?

Issue 1 - Whether the interest claimed is maintainable

11. The Petitioner has issued a Demand Notice in Form 3 dated 27.09.2021 (Exhibit B) for a sum of Rs.2,35,38,311/- (including interest). However, the Corporate Debtor has neither replied to the said notice nor made any payment to the Operational Creditor. In pursuance to the above, the Corporate Debtor in its affidavit in reply dated 20.02.2023 has raised a contention that the Demand Notice dated 27.09.2021 is defective since there is no contractual agreement between the parties with respect to the payment of interest. Further, during the course of the arguments, the Respondent has relied on the judgement of NCLT, Mumbai Bench in the matter of *Timex Bond Industries Pvt. Ltd. Vs. M/s. Deist Industries Private Limited* wherein it is stated that the Operational Creditor is not entitled for the interest in absence of any written contract between the parties. The relevant extract of the judgement is as under:

“.....However, it is settled proposition of law as laid down by Hon'ble NCLAT in various authoritative pronouncements that an Operational Creditor is not entitled for interest in the absence of any written contract between the parties. It is important to observe here that there is no stipulation for payment of interest on the invoices in case of any delay in making payment by the Corporate Debtor. Therefore, this Bench has no hesitation to hold that the Operational Creditor is not entitled to claim any interest in this case on both counts.”

12. In pursuance of the above judgement, this Bench on the basis of the documents annexed to the Petition is of the considered view that in the present case, the Petitioner was the employee of the Respondent and had entered into the employment contract vide appointment letter dated 19.04.1991 (Exhibit – C). In addition to the above, the Respondent had issued a notice dated 14.12.2018 to their employees admitting the delay in the payment of the salaries and had decided and agreed to pay an additional amount @18% p.a. on overdue of salary. Therefore, the contention of the Corporate Debtor that the notice issued by the Respondent is mere a goodwill gesture shall not survive.

Issue – 2 Whether the instant Petition meets the threshold limit?

13. The second contention raised by the Corporate Debtor is that the Petition does not meet the minimum threshold limit of Rs. 1 crore. The Full and Final Settlement report dated 23.07.2019 (Exhibit G),

duly accepted and acknowledged by the Petitioner does not mention any claim of interest, meaning thereby that the claim towards interest if any, was waived and abandoned. Further, in terms of the full and final settlement, the claims related to the statutory dues payable to the authorities and perquisites are liable to be excluded. The Respondent further mentions the employee policy (Exhibit – A of affidavit in Reply), which provides that in case of delay in crediting the pending salary or the full and final settlement amount or any other dues to the ex-employees, no interest will be payable by the company for the delayed period.

14. In view of the above, the defence of the Corporate Debtor hinges upon the employee policy which states that no interest would be payable to the ex-employees of the Corporate Debtor and therefore, the interest amount should not be claimed. However, in view of Notice dated 14.12.2018 (Exhibit – H), the breach of the employee policy is not being on the part of the Petitioner but by the Respondent as the Petitioner was the employee when the Notice dated 14.12.2018 was issued in which the Respondent had agreed to make additional payment at the rate of 18% p.a. on overdue salaries.

15. It is evident that the Corporate Debtor failed to pay the monthly salary to the Petitioner which was also a condition of the employment contract to be abided by the Corporate Debtor. The non-payment of monthly dues from time to time by the Corporate Debtor also amounted to breach of contract. Therefore, the Corporate Debtor cannot be heard harping that the Petitioner has committed breach by considering the interest in the claim amount.

16. The bench has further relied on the computation of the amount in default (Annexure – I) annexed along with the Demand notice dated 27.09.2021 issued by the Petitioner to the Corporate Debtor. The relevant extract of the computation is as under :-

ANNEXURE –I

Sl. No.	Particulars	Amount (Rs.)
I)	<u>Salary and applicable allowances and due payments:</u>	
a)	Salary for months of November, 2018, December, 2018 and January, 2019	17,70,630
b)	Leave encashment	14,62,052
c)	Gratuity	16,15,385
d)	Performance Linked Incentive for the months from April, 2016 to January, 2019 at a monthly amount varying based on appraisal and promotions during the period.	83,79,594
	Total of item (I)	1,32,27,661
II)	<u>Amounts deducted from salary to be payable to Government Authorities, but not deposited:</u>	
e)	TDS deducted from salary paid during the months from July, 2018 till October, 2018.	12,19,369
f)	TDS deducted from unpaid salaries for months from November, 2018 till January, 2019	14,57,324
	Total of item (II)	26,76,603
	TOTAL AMOUNT PAYABLE (I+II)	1,59,04,264
	Interest @ 18% per annum on aforesaid amount till 27 th June, 2021.	76,34,047
	Total amount due and payable	2,35,38,311

Sushant R. Bhat.

17. After perusal of the above document, the Bench is of the considered view that even if the amount claimed towards interest and government dues are kept aside, then also the amount claimed exceeds the minimum threshold limit of Rs 1 Crore. Moreover, the Respondent has neither replied nor objected to the Demand Notice dated 27.09.2021. No pre-existing dispute has been raised in the reply to the Demand Notice in respect of the claim amount. Therefore, the contention of the respondent that the Petition does not meet the minimum threshold does not hold good.

18. As a result of the above discussions, it is held that there has been an operational debt and default on the part of the Corporate Debtor and the Company Petition satisfies all the legal requirements under Section 9(5)(1) of the IBC Code, 2016. Considering the above circumstances, we find it to be a fit case for admission of the petition under Section 9 of the Code. It is ordered accordingly in following terms:

ORDER

- a. The above Company Petition No. 1122/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Rolta Bi & Big Data Analytics Private Limited**
- b. **Mr. Sonu Gupta** , having registration No. IBBI/IPA-001/IP-P-02261/2021-2022/13534, having email Id-

rpsonugupta@gmail.com , having address - 42/1201, 11TH FLOOR, N.R.I. COMPLEX, SEAWOODS ESTATES, NERUL, Navi Mumbai, Maharashtra ,400706, having Mobile Number-9323911177, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP costs 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 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.

- 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, CP 1122 of 2021 is **admitted**.

Sd/-

Sanjiv Dutt

Member (Technical)

//Abhay//

Sd/-

Reeta Kohli

Member (Judicial)