

N THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) - 1302/MB/2020

Under Section 9 of the I&B Code, 2016

In the matter of

Nitin Arora

C/o Mr. Rajdeep Samudrala, Adv., High
Court, Law Chambers of Samudrala, 2,
Rewa Chambers, 31, New Marine Lines,
Mumbai- 400020

.... Petitioner

vs.

Rolta Defence Technology Systems
Private Limited

Rolta Tower- C, Rolta Technology
park, MIDC, Marol, Andheri (E),
Mumbai- 400093

... Corporate Debtor

Order Pronounced on: 13.05.2021

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

Hon'ble Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Rajdeep Samudrala, Adv. Udaya Sankar Samudrala,
Adv. Sandhya Shukla

For the Corporate Debtor: Adv. Shadab Jan

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. Mr. Nitin Arora (hereinafter called as 'Petitioner') has sought the Corporate Insolvency Resolution Process of Rolta Defence Technology Systems Private Limited (hereinafter called as the 'Corporate Debtor') on

the ground that the Corporate Debtor committed default to the extent of Rs. 24,28,440/- 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.

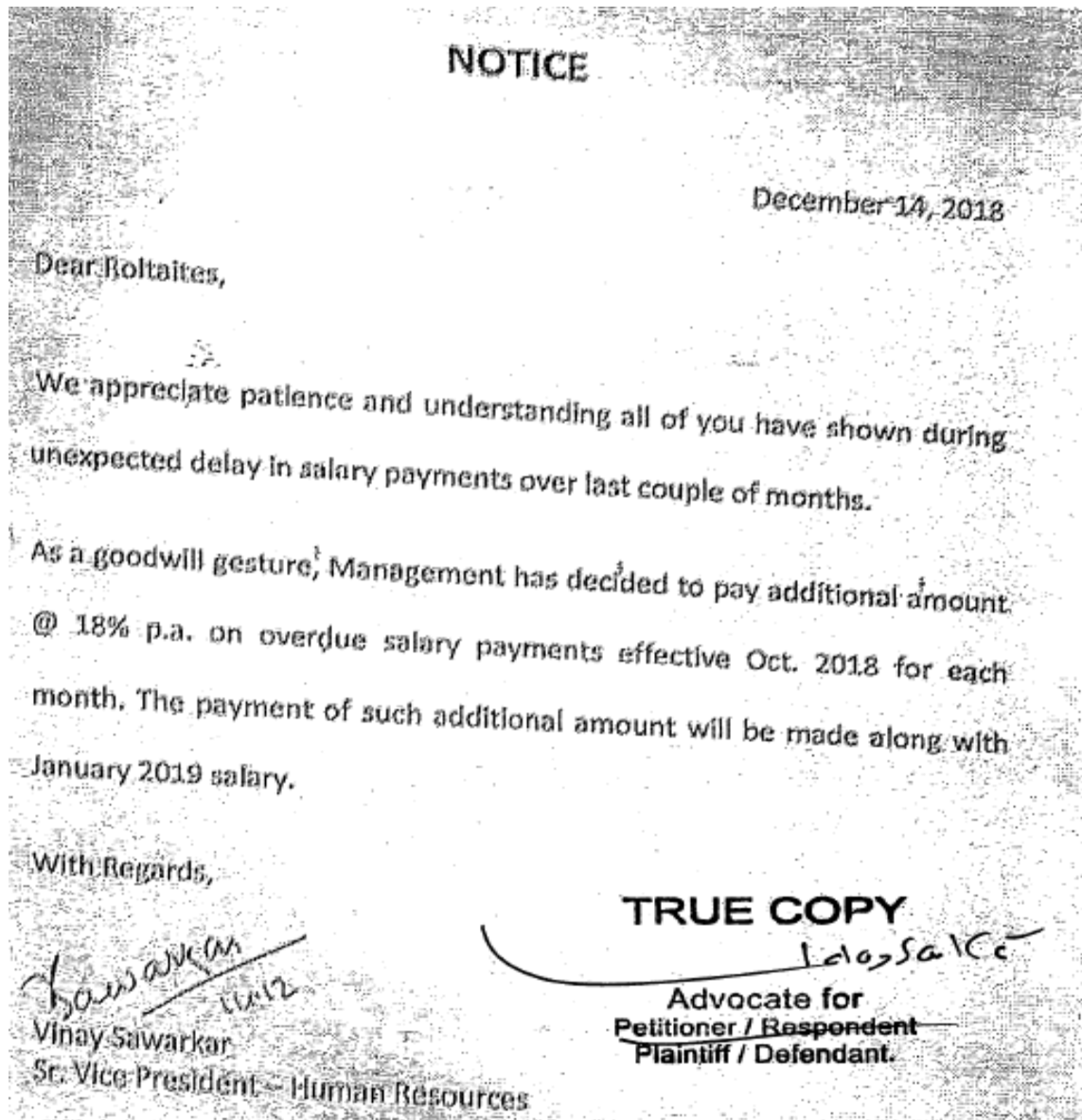
Contentions of the Petitioner:

2. The Counsel for the Petitioner submits that the Petitioner was an employee and was working as an Executive Group Manager with the Corporate Debtor which is a well-established high profile Information Technology Company having high turnover and branches all over the world. The Petitioner served with the Corporate Debtor from 21.09.2017 to 23.01.2019. On 23.01.2019, the Petitioner was forced to be relieved from the services of the Corporate Debtor.

3. The Counsel for the Petitioner further submits that during and after the tenure of the Petitioner's service, the Petitioner was not paid his salary, allowances, statutory provident fund, TDS amounts and post retirement benefits in full by the Corporate Debtor. The computation of total outstanding due is extracted below:

SR NO	Particulars	Amount (Rs.)
I)	<u>Salary and applicable allowances and due payments:</u>	
a)	Salary for the months of November 2018, December 2018 and January 2019.	5,39,205
b)	Performance linked incentive	1,95,000
c)	Leave encashment	79,157
d)	Sodexo (from April 2018 to October 2018).	12,000
e)	Other reimbursements till October 2018.	1,78,463
	Total of item (I)	10,03,825
II)	<u>Amounts deducted from salary to be payable to Government Authorities, but not deposited:</u>	
f)	Provident Fund (Employer's Contribution) from July 2018 to October 2018	42,420
g)	TDS deducted from salary (from April, 2018 to October 2018) – Not deposited with the Tax Authorities.	499,045
	Total of item (II)	5,41,465
III)	<u>Retrenchment compensation / notice period salary payable.</u>	
h)	Notice period salary payable by the company for 3 months.	539,205
	TOTAL AMOUNT PAYABLE	20,84,495
	Interest @ 18% per annum on the aforesaid amount from 01.01.2019 to 11.12.2019	3,43,945
	Total amount due and payable	24,28,440

4. The Corporate Debtor, vide a notice dated 14.12.2018, agreed to make payment of the salaries and allowances of the Petitioner with interest at the rate of 18% per annum along with salary of January, 2019. However, the Corporate Debtor failed to pay any amount to the Petitioner. The said notice is extracted below:



5. The Counsel for the Petitioner submits that on 15.03.2019, the Corporate Debtor sent a "Rolta Final Settlement Report" but once again, the Corporate Debtor failed to settle the outstanding dues of the Petitioner. When the Corporate Debtor failed to settle and pay the outstanding amount due to the Petitioner, the Petitioner issued the Demand Notice on 11.12.2019 under Rule 5 of the Code calling upon the Corporate Debtor to make the outstanding payment. The Corporate Debtor received the said notice on 28.01.2020 but failed and neglected to reply to the said notice. Hence, the Petitioner filed the present Petition on 26.02.2020. The Petitioner has also annexed the Bank Statement of the

Petitioner from the period of 01.11.2018 to 30.04.2019 to prove the dues.

Contentions of the Corporate Debtor:

6. The Counsel for the Corporate Debtor submits that the present Petition is not maintainable as per the Central Government Notification dated 24.03.2020. The Central Government exercised its powers under Section 4 of the Code and issued a notification SO 1205 (E) specifying Rs. 1 Crore as the minimum amount of default for the purposes of Section 4 of the Code. In the present case, the claim amount is clearly below the minimum threshold specified under Section 4 of the Code. Therefore, the present Petition is explicitly barred and bound to be rejected.

7. The Counsel for the Corporate Debtor then submits that any dues which fall under the Income Tax Act, 1961 or the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) are payable to the concerned government or local authority and not the Petitioner herein. Therefore, the claim of the Petitioner, so far as the same comprises of TDS and PF dues, would not be maintainable as the same is not an operational debt and hence, not payable to the Petitioner.

8. The Petitioner in the present Petition has included interest amount in the outstanding amount which is also not maintainable. According to the Company Policy, more particularly, Clause 11 of the Exit and Final Settlement Procedure specifically states that in case of any delay in crediting the pending salary or the full and final settlement amount or any other dues to the ex-employee, no interest will be payable by the Company for the delayed period. Furthermore, the Office Circular or Notice, issued by the Corporate Debtor and relied upon by the Petitioner, is not a concluded contract between the parties, and cannot be enforced. The said Office Notice was applicable only for the employees in the service of the Corporate Debtor and the Petitioner, being out of the services of the Corporate Debtor, cannot claim under the same.

9. The Counsel for the Corporate Debtor further submits that the

Petitioner has annexed and relied upon the Statement of Account of the Petitioner maintained with a banking company. However, the Petitioner has not produced any certificate under the Bankers' Books Evidence Act, 1891 (BBE Act) and failed to furnish any of the certificates as required under the BBE Act. Therefore, the statements produced with the Petition cannot be taken into evidence or be treated as proof of any transaction set out therein. Also, the Petitioner is bound to produce the documentary proof evidencing that there is no payment of unpaid operational debt in the manner provided under the Code and the Rules made thereunder. As a result of this, the Petition filed by the Petitioner is incomplete and thus, deserves to be rejected with cost.

10. The Counsel for the Corporate Debtor further submits that there are around 40 Applications filed by the other employees along with the present Petitioner for claims of similar nature and that too, through the same Advocate on Record. Therefore, the Corporate Debtor proposed to hold discussions with all the Applicants to arrive at an amicable settlement with all the Applicants/ employees concerned. Accordingly, the Corporate Debtor undertook to facilitate meetings between the concerned Applicants/ employees and the concerned personnel from the Human Resources (HR) department of the Corporate Debtor. The discussions are ongoing and the delay caused in arriving at a settlement with all the Applicants is due to the fact that the Corporate Debtor endeavors to settle with all of its employees together, without giving any preferential treatment to any of its employee. Therefore, it is reiterated that it would be in the interest of justice and welfare of all stakeholders if the Corporate Debtor is allowed to seek resolution in a holistic manner.

Findings:

11. The Bench notes that the present Petition is a crystal clear case of the employee dues. The Petitioner herein was an employee of the Corporate Debtor for the period from 21.09.2017 to 23.01.2019. During

this period of service of the Petitioner, the Corporate Debtor failed to pay the Petitioner his salary, allowances, statutory provident fund, TDS amounts and post-retirement benefits in full. Consequently, the Petitioner issued the Demand Notice dated 11.12.2019 calling upon the Corporate Debtor to pay all the outstanding dues. But, the Corporate Debtor has not paid any amount to the Petitioner till date.

12. The Corporate Debtor herein, through its Reply to the Petition and Written Submissions, has raised few defenses which are not convincing and hence, not acceptable to the Bench. The Corporate Debtor contended that the present Petition is not maintainable as the claim amount is below the threshold limit allowed as per the Notification of 24.03.2020, but as the present Petition was filed much prior to the issuance of the above mentioned Notification, the Petition is very well maintainable. Moreover, the Corporate Debtor, neither in its Reply nor in its Written Submissions, has disputed the claimed outstanding dues of the Petitioner, instead the Corporate Debtor contended that it is trying to settle the dues of all the 40 Applicants along with the Petitioner herein.

13. With the mere reading of the above mentioned facts, it has become crystal clear to the Bench that the Corporate Debtor has clearly defaulted in paying the salary and other various amounts to the Petitioner. The Bench has no hesitation in concluding that the Corporate Debtor has committed a default and therefore, it is a fit case for admission.

14. The Petitioner has not proposed the name of any Insolvency Professional for carrying out the functions as provided under Section 14 of the Code. Therefore, this Bench, by exercising its powers given under Section 16 of the Code, hereby appoints Ms. Vandana Garg as an Interim Resolution Professional to conduct the Insolvency Resolution Process.

15. This Bench, on perusal of the documents filed by the Petitioner, is of the view that the Corporate Debtor defaulted in paying the total outstanding dues to the Petitioner. Therefore, the Petition under Section 8

& 9 of the code is taken as complete, accordingly this Bench hereby admits this Petition, prohibiting all of the following of item-(I), namely:

(I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the 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 moratorium period.

(III) 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.

(IV) 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.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Ms. Vandana Garg; having Registration No. IBBI/IPA-001/IP-P00025/2016-17/10058; having email id vskgarg0899@gmail.com as an Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

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

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)