

Dr. (h.c) Mamta Binani (B.Com, FCS)
Advocate & Insolvency Professional

Registration No.: IBBI/IPA-002/IP-N00086/2017-2018/10227

Advocacy enrolment number: F/95/206 of 2019

AFA No. AA2/10227/02/061222/201693 valid till 05.12.2023

Date: 20.01.2023

BSE Limited

Phiroze Jeejeebhoy Tower

Dalal Street

Mumbai: 400001

(Scrip Code:500366)

Sirs

Sub: Intimation of initiation of Corporate Insolvency Resolution Process (CIRP) and appointment of Interim Resolution Professional (IRP) in respect of Rolta India Limited (Scrip Code: 500366)

It is hereby informed to you that the Corporate Insolvency Resolution Process (CIRP) of Rolta India Limited (Corporate Debtor) has been initiated under the applicable provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) by way of an Order of the Hon'ble Adjudicating Authority, the National Company Law Tribunal (NCLT), Mumbai Bench dated 19.01.2023 passed under section 7 of IBC, in the matter of Union Bank of India Vs. Rolta India Limited, bearing CP (IB) No.530/MB/2020.

As per section 17 of the Code, the powers of the Board of Directors of Rolta India Limited shall stand suspended and such power shall vest with me, Mamta Binani, appointed as the Interim Resolution Professional.

A copy of Order dated 19.01.2023 passed by Honorable NCLT is enclosed.

The instant intimation w.r.t initiation of CIRP and appointment of Interim Resolution Professional is for your kind information and record.

Kindly acknowledge the receipt of this document.

MAMTA Digitally signed by
MAMTA BINANI
Date: 2023.01.20
16:48:18 +05'30'
BINANI

Thanking you

Warm Regards

Dr. CS Adv Mamta Binani

Interim Resolution Professional (IRP)

In the matter of Rolta India Limited

Registration No.: IBBI/IPA-002/IP-N00086/2017-18/10227

AFA valid till 05.12.2023

Dr. (h.c) Mamta Binani (B.Com, FCS)

Advocate & Insolvency Professional

Registration No.: IBBI/IPA-002/IP-N00086/2017-2018/10227

Advocacy enrolment number: F/95/206 of 2019

AFA No. AA2/10227/02/061222/201693 valid till 05.12.2023

+91 98310 99551

roltaindia.cirp@gmail.com (process specific)

mamtabinani@gmail.com (registered with IBBI)

Address of the IRP registered with IBBI:

Second Floor, Nicco House, 2 Hare Street

Kolkata 700001, West Bengal

Past National President (2016) of The Institute of Company Secretaries of India

Office: 2nd Floor, Nicco House, 2 Hare Street, Kolkata 700001

E: mamtabinani@gmail.com

M: +91 98310 99551

NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

Item 1

C.P. (IB)/530(MB)2020

CORAM:

SH. SHYAM BABU GAUTAM
HON'BLE MEMBER (T)

JUSTICE P.N. DESHMUKH (Retd.)
HON'BLE MEMBER (J)

ORDER SHEET OF THE HEARING ON **19.01.2023**

NAME OF THE PARTIES : **UNION BANK OF INDIA**
Vs.
ROLTA INDIA LIMITED

Appearance (via video-conference):

For the Applicant : Adv. Rohit Gupta
For the Respondent : Adv. Ashish S. Kamat

Section 7 of the IBC, 2016

ORDER

Ld. counsel for the parties present. The matter is listed today under For Pronouncement of Orders. The Order is pronounced. The Company Petition against the Corporate Debtor is admitted and Ms. Mamta Binani is appointed as the Interim Resolution Professional of the Corporate Debtor. However, Ld. Counsel appearing for the Corporate Debtor Shri Ashish Kamat requested for stay of the said admission Order against the Corporate Debtor. Request is declined. Registry is directed to upload the Order immediately.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Jagdish

Sd/-

JUSTICE P.N. DESHMUKH
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 530/MB/C-I/2020

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Union Bank of India

[CIN: U99999MH1919PTC1000615]

239, Vidhan Bhavan Marg, Nariman Point, Mumbai –
400021.

... Financial Creditors /Petitioners

Versus

Rolta India Limited

[CIN: L74999MH1989PLC052384]

Rolta Tower-A, Rolta Technology Park, 22nd Street,
MIDC-Marol, Andheri (East), Mumbai - 400093.

... Corporate Debtor /Respondent

Order Delivered on 19.01.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Rohit Gupta, Counsel.

For the Corporate Debtor : Mr. Ashish S Kamat, Counsel.

ORDER

Per Coram:

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Union Bank of India** ("hereinafter referred to as Petitioners"), seeking to initiate Corporate Insolvency

Resolution Process (CIRP) against **Rolta India Limited** ("hereinafter referred to as Respondent").

2. The Corporate Debtor is a Private Limited company incorporated on 27.06.1989 under Companies Act, 1956 with the Registrar of Companies, Maharashtra, Mumbai. Its registered office situated at Rolta Tower-A, Rolta Technology Park, 22nd Street, MIDC-Marol, Andheri (East), Mumbai - 400093. Therefore, this Bench has jurisdiction to deal with this Petition.
3. The present Petition was filed before this Adjudicating Authority on the ground that the Respondent has defaulted in repayment of monies to the tune of Rs.1413,47,38,878/- (Rupees One Thousand Four Hundred Thirteen Crore Forty-Seven Lakh Thirty-Eight Thousand Eight Hundred Seventy Eight Only).
4. The Corporate Debtor is a company engaged in providing Manufacturers of Computer Aided Systems, Networking Services, and Export of Software Consultancy.
5. The date of Default is stated to be 31.01.2018, (Affidavit @ Page 437 forming part of Petition, particularly Para (i)@ Pg. 440 onwards) whereas the particulars of debt of the Petitioners is detailed as under:

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I
CP (IB) 530 /MB/C-I/2020

Sr. No.	Account No.	Type	Principal outstanding	Rate of Interest %	Unrecorded interest	Unapplied interest	Penal interest	Total dues
1.	495805010028001	Cash Credit	167558359	13.70	0.00	42598913	6274755	216432027
2.	495806310001104	WCTL I	2400000000	14.10	90177458.00	692110502	91923288	3274211247
3.	495806310001106	WCTL II	1845000000	14.35	76229723.00	590828431	70925172	2582983327
4.	495805020050008	WCDL	1299969863	13.70	0.00	383613256	49790627	1733373745
5.	495806390002402	ECB	1189026765	10.80	0.00	286764628	47821679	1523613072
6.	495807040000096	SBLC	2816036446	15.60	0.00	472111664	56320816	3344468926
7.	495807040000098	SBLC	617226158	15.60	0.00	103055237	12310703	732592097
8.	495807030001755	LC developed	924717	16.00	0.00	9377940	9377940	19680596
9.	495807030001768	LC developed	141648601	16.00	0.00	40177319	1570317	183396237
10.	495807030001786	LC developed	2704146	16.00	0.00	725025	81347	3510518
11.	495807030001791	LC developed	8258342	16.00	0.00	2214195	248429	10720966
12.	495807030001792	LC developed	1972413	16.00	0.00	528836	59334	2560583
13.	495807030001809	LC developed	107637043	15.95	0.00	26996299	3055123	137688465
14.	495807030001812	LC developed	3644854	15.95	0.00	914161	103454	4662469
15.	495807030001815	LC developed	102658165	15.95	0.00	25747553	2913804	131319523
16.	495807040000102	BG Invocation	9669730	15.50	0.00	1332614	132134	11164478
17.	495807040000114	BG Invocation	67294319	15.60	0.00	6028333	744847	74067499
18.	495807040000121	BG Invocation	5364313	16.00	0.00	462089	56003	5882405
		BG o/s	142410699	--	0.00	0	0	142410699
	Aggregate Dues		10929004932		166407181.00	2685586996	353739770	14134738879

Submissions made by the Learned Counsel of the Petitioner:

6. In the year 2009, Rolta Industries Ltd has availed Working Capital Facilities "WCTL" aggregating to Rs.400 Crores from the Union Bank Consortium comprising Union Bank of India and Bank of India. The Financial Creditor) sanctioned Rs.200 Crores & Bank of India sanctioned Rs.200 Crores.
7. The Corporate Debtor has executed (i) Working Capital Consortium Agreement; (ii) Joint Deed of Hypothecation; & (iii) Inter se Agreement dated 26th December, 2009 in favour of consortium.
8. The Facilities were reviewed, enhanced, modified and renewed from time to time and on the terms and conditions as set out in the respective sanctions and duly agreed upon by the Corporate Debtor.
9. The Corporate Debtor has executed Copy of Deed of Hypothecation cum Charge on 27th October, 2016; Memorandum of Entry on the 3rd November, 2016; & Declaration of Mortgage by deposit of Title Deeds.
10. The Financial Creditor by its Letter of Sanction dated 26th September 2016 for Rs.240 crores (WCTL-I) and 19th June, 2017 for Rs.185.00 crores (WCTL-II), sanctioned the facilities, subject to the terms and conditions which were accepted by the Corporate Debtor in the Board Meeting held on the 24th October 2016 and 21 June, 2017 respectively. **(Exhibit Z1 & Z2).**
11. By its further Revival Letter dated 25th May, 2018, the Corporate Debtor confirmed the liabilities. **(Exhibit-Z6)**

12. In the Joint Lenders meeting held on the 1 February, 2018, 16th March, 2018, 17th May, 2018 & 7th August, 2018, held between the Lenders and the Corporate Debtor to work out possibilities of settlement and revival of smooth financial working of the Corporate Debtor. The minutes of the Joint Lenders meeting are annexed as **(Exhibits- Z7 to Z9)**.
13. The Applicant had filed a Company petition under section 7 of the IBC, 2016 against the Corporate Debtor on the 10th September, 2018 registered as 3561 of 2018. At the said time, the Corporate Debtor had filed a Writ Petition before the Hon'ble Supreme Court registered as WP No.237 OF 2019 challenging the Circular dated 13th February, 2018 of the Reserve Bank of India. The Hon'ble Supreme court by its order dated 2nd April, 2019 set aside the circular dated 13th February, 2018. The NCLT, by its order dated 1st May, 2019 dismissed the Company Petition filed by the Financial Creditor with liberty to file fresh Petition. The Financial Creditor by its Letter dated 23 January, 2019 addressed to the Corporate Debtor has recalled the financial assistance/facilities granted to the Corporate Debtor.
14. Thus, the Corporate Debtor, is indebted to pay to the Financial Creditor, an aggregate sum of Rs.1413,47,38,878.00 (inclusive of interest as on as on the 31.12.2019, in respect of Financial Facilities including the restructured Financial Facilities availed from Applicant/Financial Creditor.
15. The Financial Creditor relied upon the following documents to support and established the existence of debt, default and acknowledgement of debt:

Sr. No.	Particulars	
1.	Transaction Documents	<p>a. Sanction letter dated 13th March 2007 enhancing the credit facilities from Rs. 135.38 crores to Rs. 267.50 crores [Exhibit G @ Page 92]</p> <ul style="list-style-type: none"> - LC-12.50 (from 5) - Letter of guarantee - 87.50 (from 50) - WCDL-40 (from 20) - CC-10 (from 5) - Term Loan 100 <p>b. Letter dated 16th June 2009 addressed by FC to CD in response to their request for sanction of credit facilities sanctioning term loan of USD 50 million [Exhibit H@ Page 96]</p> <p>c. Sanction letter dated 18th June 2009 renewing/enhancing the credit facilities from Rs. 250 crores to Rs. 540 crores [Exhibit G@ Page 101]. New limits-</p> <ul style="list-style-type: none"> - LC-12.50 - Letter of guarantee -87.50 - WCDL-80 (from 40) - CC-20 (from 10) - Term Loan 100 - ECB-240 <p>d. Letter dated 18th December 2009 from FC to CD modifying the sanction terms [Exhibit J@ Page 104]</p> <p>e. Letter dated 28th July 2010 from FC to CD for short review of credit facilities [Exhibit L @ Page 108]</p> <p>f. Letter dated 14th January 2011 from FC to CD for review of credit facilities [Exhibit M@ Page 110]</p> <p>g. Letter dated 28th May 2011 providing concession in rate of interest on WCDL, CC and Term Loan [Exhibit N@Page 112]</p>

		<p>h. Sanction letter dated 2nd April 2012 renewing/enhancing the credit facilities to 835 crores [Page 113]. New limits-</p> <ul style="list-style-type: none">- LC-12.50- Letter of guarantee - 87.50- WCDL - 128 (from 80)- CC-32 (from 20)- Term Loan – 100- ECB – 475 (from 240) <p>i. Sanction letter dated 3rd April 2012 sanctioning SBLC of 100 crores. [Exhibit O @ Page 116]</p> <p>j. Letter dated 22nd June 2012 from FC to CD for modification of sanction terms and conditions qua SBLC upon request of CD, providing a concession of 50% in processing charges. [Exhibit P @ Page 118]</p> <p>k. Memorandum of confirmation of interse agreement between FC, Bank of India, Central Bank of India and Bank of Baroda [Exhibit Q @ Page 119]</p> <p>l. Sanction letter dated 22nd July 2013 renewing/enhancing the credit facilities to 933.57 crores [Exhibit - R @ Page 120]. New limits-</p> <ul style="list-style-type: none">- LC 12.50- Letter of guarantee - 87.50- SBLC-68.75- WCDL – 128- CC-32- Term Loan – 100- ECB-504.82 (from 475) <p>m. Letter dated 21st October 2013 from FC to CD for modification of sanction terms and conditions providing a waiver of debtors audit and refund of 50% penal interest. [Exhibit S @ Page 123]</p> <p>n. Sanction letter dated 20th December 2013 renewing/enhancing the credit</p>
--	--	---

		<p>facilities to 982.63 crores [Exhibit - T @ Page 124].</p> <p>New limits-</p> <ul style="list-style-type: none"> - LC-12.50 - Letter of guarantee - 87.50 - SBLC-76.88 (from 68.75) - SBLC-246 - WCDL-128 - CC-32 - Term Loan - 100 - ECB 399.75 (from 504.82) <p>o. Letter dated 5th April 2014 for modification of sanction terms and conditions providing a reduction in margin and waiver of personal guarantee. [Exhibit U @ Page 132]</p> <p>p. Letter dated 18th June 2014 for modification of sanction terms and conditions qua SBLC [Exhibit V @Page 133]</p> <p>q. Sanction letter dated 25th June 2015 renewing the credit facilities from Rs. 990.50 crores to 926.50 crores [Exhibit - W@ Page 134].</p> <p>r. Letter dated 14th July 2015 addressed by the CD to FC for reversing the commission rate on letter of guarantee and for reversal of penal interest charged for delay in renewal of working capital facilities. [Page 135]</p> <p>s. Sanction letter dated 26th September 2016 renewing/enhancing the credit facilities to 1143.79 crores [Page 138].</p> <p>t. Sanction letter dated 19th June 2017 sanctioning WCTL 1 of Rs. 240 crores and WCTL of Rs. 185 crores. [Exhibit - Z1 @ Page 183]</p> <p>u. Board Resolution of CD on 21st June 2017 for availing WCTL facility from FC. [Exhibit - Z2 @ Page 187]</p>
2.	Acknowledgement Letters:	a. Revival Letter dated 25th May 2018 as addressed by the CD to FC giving an

		<p>acknowledgment for Section 18 of Limitation Act. [Page Z6 @ Page 193]</p> <p>b. Revival letter dated 28th June 2019 giving an acknowledgment for Section 18 of Limitation Act. [Page Z11 @ Page 215]</p>
3.	Security Documents:	<p>a. Memorandum of entry for deposit of title deeds dated 3rd November 2016 [Exhibit X @ Page 143]</p> <p>b. List of charges [Page 171]</p> <p>c. Certificate of charge [Page 173]</p>
4.	Other Documents:	<p>a. Demand Promissory Note dated 22nd June 2017 for Rs. 185 crores [Exhibit Z4 @ Page 191]</p> <p>b. Letter of continuity for demand promissory note for Rs. 185 crores. [Exhibit Z5 @ Page 192]</p>
5.	Admissions:	<p>a. In the Writ Petition preferred by the CD before the Hon'ble Supreme Court challenging the RBI circular dated 12.02.2018, following admissions were made- [Page Z13@ Page 223]</p> <p><i>Page 233 - "4. To transform its business model, the Petitioner raised financing from Indian public sector banks including the Respondent No.2. Part of the working capital finance availed by the Petitioner was in the form of a consortium lending which consisted of Respondent No. 3 to 6.."</i></p> <p><i>Page 234- "8. However, due to certain external factors which were beyond the control of Petitioner, the Petitioner was not able to repay its debt, as per the repayment schedule stipulated at the time of sanction..."</i> Page 235-"10. The total outstanding payable by the Petitioner being more than Rs. 3500 crores as on 28th February 2018, the Petitioner submitted its Resolution Plan before the lenders prescribed under the Impugned Circular..."</p>

		- Pages 238, 239, 259,260,271,274
6.	Reports:	a. CIBIL Report dated 12th April 2018 [Exhibit-DI@ Page 28] b. CRILC Report dated 31st October 2019 [Exhibit-D2 @Page 36]

Submissions made by the learned Counsel of the Corporate Debtor:

16. The Respondent is opposing the admission of the Company Petition on the basis of the following grounds:
- a. Petition is defective and incomplete;
 - b. Petition is filed without authorisation;
 - c. Power of Attorney is insufficiently stamped;
 - d. There is no proof of default;
 - e. Petition will derail the settlement process with strategic investors;

A. PETITION IS DEFECTIVE AND INCOMPLETE:

17. The key determinants for admission of an application under Section 7 of the Code are (i) debt and (ii) default. However, in the present case, the Petitioner has failed to disclose the date of default. Infact, the Present Petition is not only silent with respect to the date of default but is also misleading since it purports to be stating the date of default at **Exhibit B-3** whereas no such document or exhibit is to be found in the annexed.
18. Under Section 7 of the Code read with Rule 4 of the AA Rules, an application for initiating CIRP against a corporate debtor must be in strict compliance with the requisites of prescribed Form 1 along with the accompanying documents in support thereof. Rule 4(1) of the AA Rules is given below for reference:

4. Application by financial creditor –

(1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. The Hon'ble Supreme Court of India in *Innoventive Industries Ltd. vs ICICI Bank Ltd.* (2018) 1 SCC 407 has held that the provision of Rule 4 of the AA Rules are mandatory and an application under Section 7 of the Code must contain the necessary particulars indicated in Form 1 given under the AA Rules ('said Form'). The relevant extract of *Innoventive Industries Ltd.* (supra) is reproduced for reference:

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. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor.

20. As per the Form prescribed under Rule 4 of the AA Rules, one of such necessary particulars is the "Date on which Default occurred" as required at Sr. 2 under Part IV of Form 1. The Present Petition fails to meet the test and standard under Section 7 since it is defective in form as well as substance, and as such is incomplete.
21. It is for these reasons that an applicant is required to bring a complete form with accurate details and such an applicant cannot rectify the deficiencies/defects/objections raised by the Corporate Debtor by way of supplying additional documents in the Rejoinder. This Hon'ble Tribunal is required to consider the Application which is filed in format and if it is found that it is complete and there is debt and default, it has to be admitted.

B. PETITION IS FILED WITHOUT AUTHORISATION:

22. Under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [AAA Rules'], an application for initiating Corporate Insolvency Resolution Process (CIRP) against a corporate debtor must be in strict compliance with the requisites of prescribed Form 1 along with the accompanying documents in support thereof. More particularly, under S. No. 5-Part I of Form 1 given under the IB (AAA) Rules, the Applicant is mandated to furnish details of 'person authorized to submit application' along with the documents proving such authorization.
23. In the present case, the Petition is filed by the Applicant on the strength of Power of Attorney dated 6th January 2018 executed by Mr. DC Chauhan & Mr. PR Rajagopal ("said Donees") in favor of one Mr. Ranjit Singh ("said Signatory").

24. Under Section 7 of the Code, an application for initiating insolvency process can either be filed by the financial creditor itself or by any other person on behalf of such financial creditor. Where the financial creditor is an artificial person, Section 7(1) has specified that the application can be filed on behalf of such financial creditors by such persons "as may be notified by the Central Government". Section 7(1) of the Code is reproduced hereinbelow for reference:

Section 7

(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

25. In exercise of powers under Section 7(1) of the Code, by way of notification dated 27th February 2019, the Central Government has notified that only the following persons can file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of financial creditor;
- a. A guardian;
 - b. An executor or administrator of an estate;
 - c. A trustee (including a debenture trustee);
 - d. A person duly authorised by the Board of Directors of a company.
26. It is submitted that the Signatory is not a 'person authorized to submit application" as the said Power of Attorney holder cannot file proceedings for initiating corporate insolvency resolution process under the Code.

27. The Hon'ble National Company Law Appellate Tribunal has in the case of *Palogix Infrastructure Private Limited vs. ICICI Bank Limited* held as follows:

"32. The 'I & B Code' is a complete Code by itself. The provision of the Power of Attorney Act, 1882 cannot override the specific provision of a statute which requires that a particular act should be done by a person in the manner as prescribed thereunder.

33. Therefore, we hold that a 'Power of Attorney Holder' is not competent to file an application on behalf of a 'Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant'."

28. The above view of the Hon'ble NCLAT in *Palogix* (supra) has been approved and upheld by the Hon'ble Supreme Court of India in *Rajendra Narrotam Sheth v Chandrprakash Jain (2022) 5 SCC 600*. The relevant extract of the said judgment is as follows:

13. The NCLAT in its judgment in Palogix Infrastructure (supra) held that a 'power of attorney holder' is not competent to file an application under Section 7 on behalf of the financial creditor. However, the NCLAT made certain further observations, as reproduced below:

"41. In so far as the present case is concerned, the 'Financial Creditor'-Bank has pleaded that by Board's Resolutions dated 30th May, 2002 and 30th October, 2009, the Bank authorised its officers to do needful in the legal proceedings by and against the Bank If general authorisation is made by any Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant' in favour of its officers to do needful in legal proceedings by and against the Financial Creditor/Operational Creditor' / Corporate Applicant' in favour of its officer, mere use of word 'Power of Attorney' while delegating

such power will not take away the authority of such officer and for all purposes it is to be treated as an 'authorization by the Financial Creditor' / 'Operational Creditor' / 'Corporate Applicant' in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the 'Authorized Representative for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I & B Code'."

14. The NCLAT was of the opinion that general authorisation given to and officer of the financial creditor by means of a power of attorney, would not disentitle such officer to act as the authorised representative of the financial creditor while filing an application under Section 7 of the Code, merely because the authorisation was granted through a power of attorney. Moreover, the NCLAT in Palogix Infrastructure (supra) has held that if the officer was authorised to sanction loans and had done so, the application filed under Section 7 of the Code cannot be rejected on the ground that no separate specific authorisation letter has been issued by the financial creditor in favour of such officer. In such cases, the corporate debtor cannot take the plea that while the officer has power to sanction the loan, such officer has no power to recover the loan amount or to initiate corporate insolvency resolution process, in spite of default in repayment. We approve the view taken by the NCLAT in Palogix Infrastructure (supra).

C. POWER OF ATTORNEY IS INSUFFICIENTLY STAMPED:

29. The Corporate Debtor taken defence that Powers of Attorney is insufficiently stamped and cannot be acted upon in addition to the aforesaid, as per the provisions of Section 18 of the Maharashtra Stamp

Act, 1958 ("Stamp Act"), every instrument executed outside the State of Maharashtra ought to be stamped within three months after it has been first received in this State, Section 18 of the Stamp Act is reproduced hereinbelow:

“ (1) Every instrument chargeable with duty executed only out of this State may be stamped within three months after it has been first received in this State.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefore, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the State Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.”

30. Also, Section 34 of the Stamp Act further provides that any insufficiently stamped instrument cannot be admitted as evidence or be acted upon by any person or judicial authority. Section 34 of the Stamp Act is given below:

“No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped or if the instrument is written on sheet of paper with impressed stamp such stamp paper is purchased in the name of one of the parties to the instrument.”

31. In *Garware Wall Ropes Ltd. v Coastal Marine Construction & Engg. Ltd. (2019) 9 SCC 209*, the Hon'ble Supreme Court, while interpreting the import and effect of an unstamped document, has laid down that an unstamped agreement is not a contract in the eyes of law, and hence

unenforceable. The relevant paragraph from Garware Wall Ropes Ltd. (Supra) is reproduced herein below for reference:

22. When an arbitration clause is contained "in a contract", it is significant that the agreement only becomes a contract if it is enforceable by law. We have seen how, under the Indian Stamp Act, an agreement does not become a contract, namely, that it is not enforceable in law, unless it is duly stamped. Therefore, even a plain reading of Section 11(6A), when read with Section 7(2) of the 1996 Act and Section 2(h) of the Contract Act, would make it clear that an arbitration clause in an agreement would not exist when it is not enforceable by law. This is also an indicator that SMS Tea Estates (supra) has, in no manner, been touched by the amendment of Section 11(6A).

32. As per Article 48 under Schedule I of the Stamp Act, a Power of Attorney 'authorizing one person to act in more than one transaction or generally' requires stamp duty of Rs. 500/- (INR Five Hundred Only). Since the Power of Attorney is insufficiently stamped the same can neither be acted upon nor be taken into account as evidence of any transaction by this Hon'ble Tribunal.

D. THERE IS NO PROOF OF DEFAULT:

33. An application under Section 7 of the Code, unlike any pleading before a civil court, must present all necessary proofs and documents to evidence existence of debt, disbursement and default. An application under Section 7 of the Code is liable to be admitted only when the same supplies such proofs through solid documentary evidence, upon examination of which the adjudicating authority would be satisfied (without any inference of facts or presumption) that debt, disbursement and default demonstrably exist.

34. In the present case, the Petitioner has failed to produce documents and sufficient evidence which would establish existence of default or date of default. Infact, the Petitioner has failed to supply documentary evidence which would prove or demonstrate:
- a. default has occurred with respect to the amount disbursed;
 - b. date on which default has taken place;
35. In the present case, the Petitioner has not produced any document or proof which would attest to the assertions with respect to default or the date of default for the purposes of the Code. The documents produced by the Petitioner do not prove any of the above factors, and thus lacks the necessary evidence which is required for admission. Hence, the Present Petition is liable to be dismissed on this count alone.
36. The existence of default and date of default are jurisdictional facts which are required to be established to maintain an application under Section 7 of the Code, and failure to establish such jurisdictional facts would render the Present Petition as not maintainable and this Hon'ble Tribunal would not have jurisdiction to entertain the Present Petition under Section 7 of the Code. Accordingly, the issue of maintainability is required to be determined by this Hon'ble Tribunal at the threshold without venturing into the merits thereof.

**E. PETITION WILL DERAIL THE SETTLEMENT PROCESS
WITH STRATEGIC INVESTORS:**

37. The ruling of the Hon'ble Supreme Court in the case of Vidarbha Industries Power Limited Vs. Axis Bank Limited [Civil appeal No. 4633 of 2021] is squarely applicable in the current case which warrants that Adjudicating Authority has to consider the grounds made out by the Respondent against admission, on its own merits.
38. A Joint Partnership Agreement ("JPA") was entered by the Respondent with Bharat Electronics Ltd. ("BEL"), a Govt. of India Undertaking to jointly bid and respond to the EOI of Ministry of Defence ("MOD") for Battlefield Management System ("BMS") Program of the Indian Army with share of 80% for BEL & 20% for Respondent. Hereto annexed and marked as Exhibit A is copy of the Joint Partnership Agreement.
39. On 25th February 2015, MOD selected consortium of BEL & Respondent for development of BMS project and instructions were given to start the process of prototype development. In fact, a press release dated 26th February 2015 was jointly released by BEL & Respondent announcing their selections as development agency for BMS project worth over Rs. 50,000 crores. Hereto annexed and marked as Exhibit B is copy of Letter of Selection dated 25th February 2015, and Exhibit C is copy of the Press Release 26th February 2015.
40. Due to sensitive nature of the Project and the systems / procedures to which Respondent and BEL were exposed, a Confidentiality Agreement dated 12th May 2016 was entered between MOD, BEL and Respondent for the execution of project BMS.
41. Pursuant to the Agreement entered, Respondent continued to develop software of BMS project from 2015 till end of 2018 during which period

a team of MOD headed by serving personnel of rank Major General would visit the establishment and facilities of Respondent every fortnight to review the progress and cost being incurred for the Project. The MOD was endeavoring to complete the prototype of the Project by end of 2018, and thus was showing great urgency in the matter. In view of the above, the Respondent made investment of Rs. 3,800 Crores towards R&D without taking any bank facility by utilizing its surplus cash flows and the investments so made would were treated as Work In Progress (WIP) in the accounts of Respondent.

42. As per policy of MOD, once the prototype is submitted for final testing and acceptance, an amount equivalent to 80% of the project would be reimbursed by MOD. Therefore, the Respondent was expecting to receive more than Rs. 3,000 Crores by end of 2018. In this process, the Respondent also incurred huge liabilities from its bankers and financiers with the expectation that the same would be repaid once the windfall from the MOD is received at the conclusion of the prototype testing. Furthermore, after final testing of the prototype, MOD would have placed orders with Respondent for the BMS software modules in lots over next five years which would have aggregated to a total revenue stream of about Rs. 10,000 Crores.
43. Unfortunately, due to reasons beyond the control of the Respondent, the Project was foreclosed and addressed a letter dated 8th March 2019 to that effect. The above incident had totally jeopardized the financial health of the Respondent, and the Respondent had to write-off Rs. 3,836.37 crores of WIP which was BMS WIP in financial year ending 31st March 2019. Hereto annexed and marked as Exhibit F is copy of the Consolidated statement of profit and loss sheet.

44. Even after the hardships caused by the above development, the Respondent took steps to mitigate the loss and went out of its way to find a solution to the above issue. The respondent started looking for an investor which could realign its financial affairs, and thus was able to rope in Stream cast Technologies Limited ("Investor") which committed Rs. 5,500 crores to be invested in Respondent. Accordingly, a Restructuring Services Agreement ("RSA") was entered between Investor and Respondent on 6th August 2019 which provided for the terms and condition of such restructuring.
45. Due to onset of COVID by end of 2019 and beginning of 2020, the investor could not get certain statutory permissions which were required to make the above referred investment from European Central Bank. This unprecedented force majeure event (which was beyond the control of the Respondent) once again delayed the process of resolution.
46. To sort out the above roadblocks, another Agreement dated 23rd March 2022 was entered between Respondent, Investor and Jump Networks Inc. (USA) by which Jump Networks Inc. have taken over the responsibility of the Investor under the RSA Agreement since Jump Network (being a USA based company), do not require any statutory permission which was otherwise required by Investor. It is expected Jump Networks will start implementing RSA in third quarter of this financial year.
47. The Respondent is a going concern which is generating business and employment for thousands of employees. Furthermore, the Respondent being involved in various sensitive and strategic projects with MOD for defense and security purposes, the putting the Respondent through the

rigors of Code would not only be prejudicial to the Respondent but also prejudicial to the overall security interest of the nation.

Rebuttal of the Financial Creditor to the Corporate Debtor:

48. Broadly, there were two contentions raised by the Respondent in the present case.

- i. That the Petition does not disclose the date of default and no document is annexed to the Petition disclosing the date of default;
- ii. That the Power of Attorney is not complete and is insufficiently stamped. This contention was raised on the basis of the judgment of Palogix Infrastructure Pvt. Ltd. v ICICI Bank Limited, 2017 SCC OnLine NCLAT 266 by the Hon'ble National Company Law Appellate Tribunal (NCLAT).

49. The contentions deserve to be rejected inter alia for following reasons:

- a. As far as the date of default is concerned, the date of NPA is taken as the date of default i.e., 31 January 2018. It is true that in the Form, the date of default was cross referred to an Annexure which remained to be exhibited. However, as demonstrated during the course of arguments, in the accompanying Affidavit to the Petition which was filed along with the Petition and as part of the Petition, it is clearly stated at page 436 that the date of default and the date of NPA is 31st January 2018. This Affidavit is at page 436 of the Petition.
- b. The law demands that the account should be in default. It is not the case of the Corporate Debtor that they are not in default. It is further admitted that there is default and therefore a Resolution

Plan was given to the lenders. Therefore, this contention holds no merits.

- c. The other issue which was raised by the Corporate Debtor was with respect to Power of Attorney being insufficiently stamped. It is the case of the Corporate Debtor that the Power of Attorney is insufficiently stamped. This Tribunal is required to look into that whether there is a valid authorization in favour of the person filing an application before the Tribunal. It is also contended by the Corporate Debtor that no petition can be filed on the basis Power of Attorney by placing reliance on Palogix Infrastructure Pvt. Ltd. v/s. ICICI Bank Ltd. (2017 SCC OnLine NCLAT 266). The Respondent also relied upon the memorandum issued by the Ministry of Corporate Affairs to contend that Power of Attorney is not a valid instrument on the basis of which a Petition under Section 7 of the Code can be filed.
- d. Therefore, on one hand it contended that the Power of Attorney is not sufficiently stamped and at the same time it is contended that the Power of Attorney is not a valid document on the basis which a Petition can be filed.

These contentions deserve to be rejected in view of the fact that the Hon'ble NCLAT in the very same judgment of ICICI Bank Ltd. has held as follows:

"41. In so far as, the present case is concerned, the 'Financial Creditor'-Bank has pleaded that by Board's Resolutions dated 30th May, 2002 and 30th October, 2009, the Bank authorised its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant' in favour of its officers to do needful in legal proceedings by and

against the Financial Creditor/'Operational Creditor/'Corporate Applicant, mere use of word 'Power of Attorney' while delegating such power will not take away the authority of such officer and for all purposes it is to be treated as an 'authorization' by the 'Financial Creditor/Operational Creditor/'Corporate Applicant' in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the 'Authorized Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of '1&B Code'."

- e. This judgment further came up for consideration before the Hon'ble Supreme Court in the matter of Rajendra Narrotamdas Sheth v/s. Chandraprakash Jain (2022) 5 SCC 600 (relevant paragraphs 12, 13, 14 and 15). The Hon'ble Supreme Court approved findings given in paragraph 41 of the judgment of the Hon'ble NCLAT. The Hon'ble NCLAT in case of a bank conclusively held that even if a Power of Attorney is not an instrument on the basis of which an Application under Section 7 can be filed, a Power of Attorney can always be treated as letter of authorization which permits an Application to be filed. Therefore, in the case of ICICI on which the Respondent relies, the Hon'ble NCLAT permitted a bank to maintain an application on the basis of Power of Attorney treating it to be an authorization letter authorizing its officer to file an application. On this ground itself, the contention deserves to be rejected.
- f. The Hon'ble Supreme Court in fact, permitted an application filed on the basis of Power of Attorney in a bank's case which was issued on the basis of a resolution passed in 2008 which was much prior to the Code coming into force. This was treated as a valid

authorization for the purpose of filing an application. The Hon'ble Supreme Court further held as follows:

"In the present case, Mr. Praveen Kumar Gupta has been given general authorisation by the Bank with respect to all the business and affairs of the Bank, including commencement of legal proceedings before any court or tribunal with respect to any demand and filing of all necessary applications in this regard. Such authorisation, having been granted by way of a power of attorney pursuant to a resolution passed by the Bank's board of directors on 06.12.2008, does not impair Mr. Gupta's authority to file an application under Section 7 of the Code. It is therefore clear that the application has been filed by an authorised person on behalf of the Financial Creditor and the objection of the Appellants on the maintainability of the application on this ground is untenable."

- g. In view of the above, the contention that there is no valid authorization deserves to be rejected. In fact, the document can be treated as authorization, if not Power of Attorney.
- h. As far as the argument of stamp duty being insufficient, the same deserves to be rejected. This petition is not filed for enforcing any document or any right. This is filed for the purpose of initiating insolvency and what is required to be proved at this stage is the existence of a valid authorization to file a petition against the Corporate Debtor. There is no stamp duty prescribed for authorization to file a petition under Section 7. Pertinently, in insolvency matters, courts have time and again held that payment of stamp duty cannot be raised as an issue at the stage of admission. It is settled law that once the debt in default is proved and valid authorization is placed on record, the issue of sufficient

or insufficient stamp duty will not arise. There is otherwise also no basis for this argument of insufficient stamp duty.

Findings:

50. We have perused the records and heard the submissions of Ld. Counsel for both sides.
51. Firstly, the primary defence raised by the Corporate Debtor that the petition is incomplete and defective, the Petitioner has failed to state the date of default in Part IV of Form I. This Adjudicating Authority relies upon judgement of Hon'ble NCLAT in ***Bishal Jaiswal Vs. Asset Reconstruction Company (India) Ltd. Company Appeal (AT) (Insolvency) No. 385 of 2020*** relevant paragraphs are as follows:

17. The NCLT Rules, 2016 defines 'pleadings' in a very distinct manner. Rule 2 of the sub-Rule (19), which defines 'pleadings' provides as follows:

"(19) "pleadings" means and includes application including interlocutory application, petition, appeal, revision, reply, rejoinder, statement, counter claim, additional statement supplementing the original application and reply statement under these rules and as may be permitted by the Tribunal;"

18. Even supplementary affidavit or additional affidavit filed before Adjudicating Authority will be covered by the definition of 'pleadings'. The present case is a case where there was no mention about the date of default in Section 7 Application, nor under Part-IV or Part-V of Form-1, no balance sheets of the Corporate Debtor was mentioned. When pleading can be amplified by filing supplementary affidavit or additional affidavit by way of rejoinder statement etc., it is not necessary that unless Application in Form-1 is amended, additional affidavits and materials cannot be looked into. Admittedly, the balance sheet ending as on 31st March, 2017 was filed before the Adjudicating Authority along with supplementary affidavit of the Financial Creditor. There is no statutory

prohibition in looking into the supplementary affidavit, nor it is incumbent that Part-V of Form-1 is to be necessarily amended by adding balance sheet as on 31st March, 2017 for placing reliance on the relevant documents.

19. *In the above context, we may refer to a judgment of Hon'ble Supreme Court reported in 2021 SCC OnLine 543 – Dena Bank (Now Bank of Baroda) vs. C. Shivakumar Reddy and Anr. It was held by the Hon'ble Supreme Court that Form-1, under which an Application under Section 7 is to be filed is only a statutory Form and does not contain elaborate pleadings. In paragraph 73, following was laid down:*

“73. Since a Financial Creditor is required to apply under Section 7 of the IBC, in statutory Form 1, the Financial Creditor can only fill in particulars as specified in the various columns of the Form. There is no scope for elaborate pleadings. An application to the Adjudicating Authority (NCLT) under Section 7 of the IBC in the prescribed form, cannot therefore, be compared with the plaint in a suit. Such application cannot be judged by the same standards, as a plaint in a suit, or any other pleadings in a Court of law.”

20. *Further, the Hon'ble Supreme Court in the above judgment laid down that there is no bar in filing document at any time before the Adjudicating Authority until a final order is passed. In paragraph 91, following has been laid down:*

“91. On a careful reading of the provisions of the IBC and in particular the provisions of Section 7(2) to (5) of the IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed.”

In the backdrop of the above judgements contention of the Respondent can not be considered as the Ld. Counsel for the Petitioner during the

course of arguments has drawn our attention to Page 440 of the Petitioner wherein the Financial Creditor has stated that the Corporate Debtor was classified as NPA on 31.01.2018. In this regard, the Hon'ble NCALT in *Jagdish Prasad Sarada v. Allahabad Bank Company Appeal (AT) (Insolvency) No. 183 of 2020* has held as under:

“The Hon'ble Supreme Court has already observed in Civil Appeal No. 439, 436, 3137, 4979, 5819 & 7289 of 2018 in B.K.Educational Services Pvt. Ltd Vs. Parag Gupta and Associates dated 11.10.2019 that the limitation period for application under section 7 of the Code is 3 years as provided by Article 137 of the Limitation Act, 1963 which commences from the date of default and is extendable only by application of section 5 of Limitation Act, 1963 if any case for condonation of delay is made out. The view taken by the Hon'ble Apex Court in 'B.K.Educational Services Private Limited Vs. Parag Gupta and Associates' that the limitation period for application under Section 7 of the I&B Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of The Limitation Act, 1963 if any case for condonation of delay is carved out, has again been reiterated in the latest pronouncement of Hon'ble Apex Court in 'Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. (Civil Appeal No.6347 of 2019) decided on 14th August, 2020. It is therefore manifestly clear that date of default will be the date of declaration of account as NPA and such date of default would not shift.”

52. Accordingly, the date of default is 31.01.2018.
53. Secondly, the Ld. Counsel for the Respondent argues that the Power of Attorney holder cannot file an Application under Section 7 of the Code

in furtherance of the same he has placed reliance on ***Palogix Infrastructure Pvt. Ltd. v/s. ICICI Bank Ltd. (2017 SCC OnLine NCLAT 266)*** and the Judgment of Hon'ble Apex court in ***Rajendra Narrotam Sheth v Chandrprakash Jain (2022) 5 SCC 600.***

54. Per contra the Ld. Counsel for the Petitioner has taken us through the very same judgments relied upon by the Respondent. The relevant paragraphs are reproduced in Paragraph 50(d) & (f) supra wherein it is iterated by the Hon'ble NCLAT a Power of Attorney can always be treated as letter of authorization which permits an Application to be filed. The Hon'ble Supreme Court approved findings given in paragraph 41 of the judgment of the Hon'ble NCLAT in Paragraph 11 of Palogix Infrastructure Pvt. Ltd. v/s. ICICI Bank Ltd. Therefore, the present Petition is maintainable.
55. Upon perusal of the documents placed before us by the Financial Creditor it is evident that the amount was disbursed and the Corporate debtor has defaulted in repayment of the same. The tabulated chart of the documents annexed by the Petitioner is reproduced in Paragraph 15 supra.
55. The Hon'ble Apex Court in ***E.S. Krishnamurthy vs Bharath Hi-Tecch Builders (P) Limited 2022 3 SCC 161*** has held as under:
- “24. On a bare reading of the provision, it is clear that both, Clauses (a) and (b) of sub-Section (5) of Section 7, use the expression “it may, by order” while referring to the power of the Adjudicating Authority. In Clause (a) of sub-Section (5), the Adjudicating Authority may, by order, admit the application or in Clause (b) it may, by order, reject such an application. Thus, two courses of action are available to the Adjudicating Authority in a petition under Section 7. The Adjudicating Authority must either admit the application under Clause (a) of sub-Section (5) or it must reject the application under Clause (b) of sub-Section (5). The statute does*

not provide for the Adjudicating Authority to undertake any other action, but for the two choices available.

25. In Innoventive Industries (supra), a two-judge Bench of this Court has explained the ambit of Section 7 of the IBC, and held that the Adjudicating Authority only has to determine whether a “default” has occurred, i.e., whether the “debt” (which may still be disputed) was due and remained unpaid. If the Adjudicating Authority is of the opinion that a “default” has occurred, it has to admit the application unless it is incomplete. Speaking through Justice Rohinton F Nariman, the Court has observed:

“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. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by

the financial creditor, is important. This it must do within 14 days of the receipt of the application. 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 unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be. [...]

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.” (emphasis supplied)

56. Therefore, at this juncture it is essential to ascertain that the default has been committed in respect of a debt is due and payable. The Respondent in light of *Vidarbha Industries Power Limited Vs. Axis Bank Limited [Civil appeal No. 4633 of 2021]* has contended that discretion be exercised as the company is a going concern. The said judgement is not applicable in

present case as the Hon'ble Apex Court in Vidarbha Industries has held that if there are good reasons to keep admission of the Corporate debtor in abeyance and the Corporate debtor has carved out a case against its admission on its own merits, this Adjudicating Authority can exercise its discretion.

“87. Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition.

88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/ decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/ Decretal amount is incapable of realisation. The example is only illustrative.”

57. However, in the present case the Corporate Debtor has miserably failed to carve out its case against admission into CIRP. Therefore, we are satisfied that there exists a financial debt and default on the part of the Corporate Debtor in payment of the debt.

58. The application made by the Financial Creditors is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor
59. The Financial Creditor has proposed the name of **Ms. Mamta Binani**, Registration No. IBBI/IPA-002/IP-N00086/2017-18/10227, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
60. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing CP (IB) 530/MB/C-I/2020 filed by **Union Bank of India**, the Financial Creditors, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Rolta India Limited [CIN: L74999MH1989PLC052384]**, the Corporate Debtor, is admitted.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium: -
- (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) **Ms. Mamta Binani**, Registration No. IBBI/IPA-002/IP-N00086/2017-18/10227, having address at 2nd Floor, Nicco House, 2, Hare Street, Kolkata – 700001, West Bengal is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall

send a compliance report in this regard to the Registry of this Court
within seven days from the date of receipt of a copy of this order.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

19.01.2023
SAM

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)