

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

I.A. 331 OF 2024

IN

C.P.(IB) No. 1122/MB/2021

Under Section 60(5) of the Insolvency &
Bankruptcy Code, 2016 r/w 11 of the
NCLT Rules, 2016

Greenshift Initiatives Private Limited,
W-223, MIDC, TTC Industrial Area,
Khairne, Thane, Navi Mumbai – 400709

... Applicant

Vs

**Sonu Gupta, Resolution Professional of
Rolta Bi & Big Data Analytics Private
Limited,**
42/1201, 11th Floor, N.R.I. Complex
Seawoods Estates, Nerul, Navi Mumbai –
400706

... Corporate Debtor

In the matter of

Dr. Sohrab Rustom Bhot,

...Respondent

Vs

Rolta Bi & Big Data Analytics Private

Limited,

... Corporate Debtor

Order Delivered on: 13.08.2024

Coram:

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Adv. Abhishek Anand (PH)

RP in person: Adv. Sonu Gupta (VC)

For the RP: Adv. RS Pandey (VC)

Per: Ms. Reeta Kohli, Member (Judicial)

ORDER

1. The case of the Applicant in this IA is that he be allowed to attend the CoC meetings and the Respondent-RP be directed to give notice of all future meetings of CoC to the Applicant for enabling the Applicant to attend the meetings of the CoC.
2. The case of the Applicant is that vide order 13.10.2023, the Corporate Debtor i.e. Rolta Bi & Big Data Analytics Private Limited was admitted to CIRP and the Respondent was appointed as RP for the said proceedings. The public announcement in Form-A was published on 16.10.2023 and the last date of submission of the claims was stated to be 28.10.2023.
3. The case of the Applicant is that he entered into Assignment Agreement dated 06.11.2023 with one Rolta Private Limited. In terms of the said Assignment Agreement, Rolta Private Limited being the Assignor unconditionally and irrevocably assigned its debt to that of the Applicant. The Applicant has made payment of Rs. 3,25,000/- to the Assignor Rolta Private Limited.
4. The case of the Applicant further is that the said debt arose due to the financial assistance of Rs. 3,48,742 having been provided by the Assignor Rolta Private Limited to that of the Corporate Debtor and the said debt is

also acknowledged by the Corporate Debtor in its balance confirmation letter to Rolta Private Limited on 02.10.2023.

5. The case of the Applicant is that in view of the above stated, the Applicant filed a claim of Rs. 3,48,742/- in Form-C dated 08.11.2023. The Respondent has been made duly aware of the said assignment. The Applicant has also placed on record one legal opinion having been sought from Justice S.C Gupta saying that the Assignment of loan granted to the Applicant by the said Rolta Private Limited deserve to be taken on record and the Applicant deserves to be admitted as a Financial Creditor. On 05.12.2023 from the IBBI portal, the Applicant came to know that he has been admitted as an unsecured Financial Creditor. In fact, the Respondent also vide email dated 18.01.2024 informed the Applicant that the Applicant's claim has been admitted entirely as an unsecured Financial Creditor. It is also stated that being an Assignee, after announcement of the CIRP Proceedings, the Applicant cannot be given any voting rights in terms of Section 21 of the Code.
6. The case of the Applicant is that he deserves to be given a seat in CoC with voting rights as he by no means can be stated to be directly or indirectly, connected or related to Corporate Debtor in any manner. Thus, Applicant cannot be termed as a related party of the Corporate Debtor under Section

5 (24) of the Code, thus, cannot be disqualified from being a member of the CoC in terms of first proviso to Section 21(2) of the Code.

2) The Committee of Creditors shall comprise of all financial creditors of the Corporate Debtor:

.....
PROVIDED that a [financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor] shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

a) *After the proviso, the following proviso shall be inserted namely: -*

“PROVIDED FURTHER that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares [or completion of such transactions as may be prescribed] prior to the insolvency commencement date.

The Applicant made an attempt to rely upon the INC report of 2020 stating that when a Financial Creditor assigns their debt to a third party in good faith, such third party remains entitled to participate, represent and vote in CoC.

7. On the other hand, the case of the RP is that the assignment of debt to the Applicant who claims himself to be an independent party, cannot be treated as an independent party as the debt assigned to him is firstly during the course of the CIRP, secondly, from a related party. Thus, related party could only assign the rights, privileges or disqualifications which it carried in the CIRP to the Assignee. In fact, the Assignee has stepped into the shoes of a related party. Thus, he cannot be given any better rights than that of related party.
8. In addition, the case of the Respondent/RP is that the claim of the Applicant has been duly admitted, but in view of the relationship of the Assignor with that of the Corporate Debtor, the Assignee cannot be given any voting rights in the present case, the said rights were assigned to the Applicant during the course of CIRP through the Assignment Agreement. Thus, the Applicant is not entitled to be given any rights to be a voting member of CoC.
9. After having heard both the Ld. Counsels for the parties and after appreciating the relevant provisions of the Code i.e. Section 21 and also

Section 5(24) of the Code. It is evident that in the present case, ‘Rolta Private Limited’ who is a related party, has assigned its debt to the Applicant after the Corporate Debtor was admitted to CIRP on 13.10.2023. The debt is stated to have been assigned to the Applicant on 06.11.2023. As is the settled principle of law that “one cannot assign a better right or title that he himself possess”. Thus a related party having a bar of not being allowed to be part of CoC cannot get over the said bar merely by assignment. The assignment of debt will carry the prohibition or bar which were there in the hands of related party. Assignment is transfer of one’s rights to recover debt to another person and that the rights of the Assignee are no better than that of an Assignor. Thus, the Assignee does not get the right to change its status from a related to an unrelated party merely by the assignment of the debt.

10. Thus, it is evident that firstly the bar is because of the relationship of the parties and secondly the bar is on the person who’s holding the debt and not the nature of the debt *per-se*. That is precisely the reason why the Respondent-RP has in fact admitted the debt but not allowed the Applicant to be a member of CoC which seems to be justifiable in view of the objective of the law.

11. We also deem it appropriate to consider the judgment of the Hon'ble Supreme Court in *Phoenix ARC Private Limited Vs. Spade Financial Services Limited (2021) (3) SCC 475* wherein the Hon'ble Supreme Court in fact while appreciating the Insolvency Law Committee Report and quoting from the same has held that the objective is to prevent erstwhile promoters and other related parties of the Corporate Debtor from gaining control of the Corporate Debtor during the CIRP by virtue of any loan that may have been provided by them. It is evident that the objective is to exclude a related party of the Corporate Debtor from the CoC so as to obviate the conflict of interest that may arise if a related party is allowed to become a part of CoC. Thus, the Hon'ble Supreme Court held that the true test for determining whether the exclusion in the first proviso to Section 21(2), applies must be formulated in a manner which would advance the object and purpose of the Statute and not leads to its provision being defeated by indigenous strategies. The Hon'ble Court also held that if the definition of the expression "related party under Section 21(24) applies at the time when the debt was created, the exclusion in the first place to Section 21(2) would stand attracted.

12. Thus, keeping in view of the law laid down by the Apex Court and the objective of the Code itself in context with the facts and circumstances of

the present case, we deem it appropriate not to grant the relief being prayed for. In view of the above, the present Application is **dismissed**.

Sd/-
MADHU SINHA
Member (Technical)
/Ziyaul/

Sd/-
REETA KOHLI
Member (Judicial)