

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 23

IA 2159/2020 IA 1530/2021 IA 2792/2022 IA 3928/2022 IA 137/2022 IA 142/2022 IA 143/2022 IA 144/2022 IA 150/2022 IA 161/2022 IA 163/2022 IA 178/2022 IA 288/2022 IA 289/2022 IA 290/2022 IA 306/2022 in C.P.(IB)1387/MB/2017

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **31.10.2023**

NAME OF THE PARTIES: **ERICSSON INDIA PVT LTD. V/s**
 RELIANCE COMMUNICATIONS
 LIMITED

Section 60(5) & 9 of the Insolvency and Bankruptcy Code, 2016

ORDER

IA 2159/2020

- 1) Mr. Maulik Bhansali, Ld. Counsel for the Applicant is present through Video Conferencing and Mr. Rishabh Jaisani, Ld. Counsel for the Respondent is present through Video Conferencing.
- 2) The present Interlocutory Application has been filed by the Applicant, Commercial Tax & GST Officer, C.T. & G.S.T. Circle, Bhubaneswar – III, Bhubaneswar, Odisha in the matter of M/s Reliance Telecom Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking an order from this Bench for the

condonation of delay in filing the claim in the Corporate Insolvency Resolution Process (“CIRP”) and for direction to the Resolution Professional of the Corporate Debtor.

- 3) This Tribunal vide order dated 15.05.2018 initiated the CIRP against the Corporate Debtor by admitting the application of the creditor under the IBC, 2016 and Mr. Pradeep Kumar Sethi was appointed as the IRP. Further, the RP issued Public Announcement inviting claims on 07/05/2019 fixing the last date of submission as 21/05/2019. In the meantime, the respondent Shri Anish Nanavaty has also been substituted as the Resolution Professional.
- 4) The Corporate Debtor, M/s. Reliance Communication Limited, was carrying on its business activities within the State of Odisha and was registered within the jurisdiction of the Applicant under the erstwhile Orissa Value Added Tax Act, Orissa Entry Tax Act, 1999, Central Sales Tax (Orissa) Rules, 1957.
- 5) The Corporate Debtor was re-assessed under Orissa Entry Tax Act, 1999 and Central Sales Tax (Orissa) Rules, 1957 for various tax periods from 01.04.2006 to 31/03/2014 and tax demands were raised.
- 6) Further, the Corporate Debtor has also preferred Appeal against those orders of assessment which have also been disposed of. Similarly, the admitted entry tax dues since 2006 has not been paid by the Corporate Debtor basing on the interim order of stay passed by the Hon’ble High Court in challenge to the vires of the Orissa Entry Tax Act and thereafter by the Hon’ble Supreme Court.

- 7) It is submitted that the Hon'ble Apex Court vide order dt. 28.03.2017, held the said Act as intra vires and as such the whole of the Entry Tax fell due for payment. The outstanding tax liabilities of the Corporate Debtor under the aforesaid taxing statutes stood at Rs. 1,20,54,050/-.
- 8) That the Assessing officer/applicant issued various demand notices to the declared place of business of the Corporate Debtor at Bhubaneswar, Odisha during 2019 which though received but no payment was made. The applicant-Assessing officer, once again vide notices dated 03.12.2019 and 10.06.2020 issued to the declared place of business of the Corporate Debtor at Bhubaneswar, Odisha, demanded payment of the outstanding Tax dues. However, the said letters dated 03/12/2019 and 10/06/2020 returned unserved from the declared place of business and when the applicant sometime during July, 2020 contacted the local lawyer of the Corporate Debtor who usually appears in the Tax proceedings, the applicant came to know about initiation of the present Corporate Insolvency Resolution Process (CIRP) against the said Corporate Debtor.
- 9) That the applicant after having come to know about the present CIRP during July, 2020 in the manner stated above, made further enquiry and came to know that one of the Operational Creditor namely M/s. Ericsson India Pvt. Ltd. has initiated the present insolvency proceeding under IBC, 2016 against the Corporate Debtor.

- 10) It is further submitted that none of the Resolution Professionals appointed by this Tribunal have ever published the public announcement in **Form-A** in any of the regional dailies in Odisha.
- 11) As per Regulation 6 of the IBBI Regulations, 2016 the insolvency professional shall make public announcement in one English and regional daily with wide circulation at the location of the registered office of the Corporate Debtor as well as at its principal office and places where the Corporate Debtor conducts material business operation. However, it is submitted that neither the initial public announcement dated 21.05.2018 nor the 'Public Announcement' in Form-A dated 07.05.2019 has been published in any of the regional dailies in the State of Odisha notwithstanding the fact that the Corporate Debtor was conducting material business operations and was having principal place of business in the State of Odisha.
- 12) That further Shutdown and lockdown was declared throughout India including in the State of Odisha on account of COVID-19 pandemic since 23.03.2020. Owing to such restrictions, the normal functioning of the offices of the applicant has also been affected. However, it is further submitted that the petitioner although was having operational debt payable by the corporate debtor, yet could not submit the claim within the time fixed in the public announcement. It is only after coming to know about the initiation of such CIRP against the Corporate Debtor during July, 2020 and partial relaxation of the lockdown/shutdown restrictions, the petitioner submitted its proof of

claim in **Form-B on 05.08.2020** along with application explaining the reasons of delay to the Respondent Resolution Professional.

- 13)** It is also submitted that the proof of claim in Form B has also been sent on 07.08.2020 and 10.08.2020 to the Resolution Professional through E-mail; since, no Reply was received, the Applicant issued email reminders on 29.08.2020 and 17.09.2020 to the Resolution Professional requesting for consideration of the claim. However, it is submitted that the Resolution Professional has not replied either admitting or rejecting the claim submitted by the Petitioner and has been sitting over the same.
- 14)** It is further stated that the Corporate Debtor on 15.05.2018 has participated in some of the assessment proceedings before the Applicant through its Counsel, yet neither the Corporate Debtor nor the Resolution Professional have ever intimated the Applicant about the present CIRP.
- 15)** Applicant lastly submits that the present Operational debt is a Governmental due statutorily payable by the Corporate Debtor and such Governmental dues are reflected in the books of account of the Corporate Debtor and the Resolution Professional ought to have taken into account such dues while preparing the list of Creditors. It is also submitted that the impugned Operational Debt is also an indirect tax statutorily due from the Corporate Debtor and as such the Corporate Debtor has already collected such tax from the ultimate Customers; hence, refusal to entertain the claim

of the Applicant by the Resolution Professional would amount to misappropriation of Government money by the said Corporate Debtor.

- 16) Ld. Counsel for the Resolution Professional of the Corporate Debtor has also filed and placed on record Affidavit in Reply; however, at the time of hearing of the Application, he has reported no objection, if the present Interlocutory Application is allowed.
- 17) In that view of the matter, we find that there is nothing on record to suggest that the complete books of accounts or records of the Corporate Debtor were not available. To the contrary, the Corporate Debtor was a going concern at the time of commencement of CIRP, employing manpower in every vertical. The complete records were available in the ERP based accounting software.
- 18) However, considering the fact that the existence of demand would be available in the records of the Corporate Debtor; the demand finally came to be raised pursuant to the decision of first appellate authority directing for re-determination of tax demand; and the plan is still not approved by this Tribunal, we consider it appropriate to condone the delay and direct the Resolution Professional to admit the claim of the Applicant herein on merit after verification thereof.
- 19) With the aforesaid observation and direction, the Interlocutory Application bearing IA No. 2159 of 2020, is disposed of as Allowed. There would however be no order as to costs.

IA 3928/2022

- 1) Ld. Counsel for the Parties are present.
- 2) Heard and Reserved for Orders.
- 3) Parties are at liberty to file and place on record written submissions not more than Three (3) pages each and judgments, if any, which they wish to rely upon, within a week.

IA 1530/2021 IA 2792/2022 IA 137/2022 IA 142/2022 IA 143/2022 IA 144/2022

IA 150/2022 IA 161/2022 IA 163/2022 IA 178/2022 IA 288/2022 IA 289/2022

IA 290/2022 IA 306/2022

- 1) Ld. Counsel for the Parties are present.
- 2) Stand over to 13.12.2023, for further consideration and hearing.

Resolution Professionals of Reliance Communications Limited and Reliance Telecom Limited are directed to compile a synopsis jointly in relation to transaction under the Avoidance Applications, where Reliance Group companies are involved to ascertain final impact of such transactions on each of Corporate Debtor under CIRP.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**

Vedant Kedare