

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 527 OF 2022

Under Section 43 & 44 of Insolvency &
Bankruptcy Code, 2016

Mr. Anish Niranjan Nanavaty
The Resolution Professional

...Applicant

Vs.

Reliance Communications Limited

...Respondents

In the matter of

C.P.(IB) No. 1386/MB/2017

Ericsson India Pvt Ltd

Financial Creditor

Vs.

Reliance Telecom Ltd.

Corporate Debtor

Order delivered on: 15.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

For the Applicant/RP : Mr. Anoop Rawat a/w Mr. Rishabh Jaisani and Ms. Kriti Kalyani, Advocates

For the Respondent 1 : Mr. Ankit Lohia a/w Mr. Udit Raghuwanshi, Advocates

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This application IA 527/2022 was filed by Mr. Anish Niranjnan Nanavaty ("Applicant") in the matter of M/s Reliance Telecom Limited (Corporate Debtor) under Section 43 & 44 of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs:
 - a. Order and declare that the Impugned Transaction, i.e. transaction set out as entered into between the Corporate Debtor and the Respondents, constitute preferential transaction under Section 43 of the Code;
 - b. Order and declare the aforesaid Impugned Transaction entered into between Corporate Debtor and the Respondents as being null and void and set aside the same,
 - c. Any other relief, including under Section 44 of the Code, that this Hon'ble Adjudicating Authority may deem fit.
2. The present Application is being filed in view of the fact that the Applicant has observed that prior to the commencement of its CIRP, the Corporate Debtor repaid to the Respondent, an unsecured loan amounting to INR 2,955.11 crores, which was availed by the Corporate Debtor from the Respondent M/s Reliance Communication Limited, which is also in CIRP. The Corporate Debtor further made payments

towards interest at the rate of 13.41% on the said unsecured loan, amounting to INR 170.45 crores.

2.1. This Tribunal vide order dated 15.05.2018 initiated the CIRP against the Corporate Debtor by admitting the application 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.

2.2. In view of the aforementioned Orders, the CIRP of the Corporate Debtor was recommenced. It is pertinent to note, by an Order dated 9 May 2019, the period between 30 May, 2018 and 30th April, 2019 has already been excluded by this Hon'ble Adjudicating Authority. Subsequently, by an order dated 21 June, 2019 (published on 28th June, 2021) of this Hon'ble Adjudicating Authority, the Applicant has been confirmed as the resolution professional for the Corporate Debtor

2.3. Pursuant to the aforesaid, the Applicant has taken over the management and business affairs of the Corporate Debtor, including its other functions as an RP under the Code. The Applicant had appointed auditors, Grant Thornton India LLP ("Auditors"), in order to ascertain if the Corporate Debtor had entered into transactions which could be classified as, inter alia, preferential, undervalued, extortionate and fraudulent as per the Code. The Auditors, by way of their interim report dated 9th January, 2020, which formed part of the final report dated 10 January, 2020 ("Auditor's Report"), have identified the Impugned Transaction, ie, the repayments made by the Corporate Debtor towards the unsecured loan taken by it from the Respondent, along with interest thereon, amounting to INR 3,125.56 crores, would constitute a

preferential transaction under Section 43 of the Code, being a transaction which has been entered into during the period of 2 years prior to insolvency commencement date, the period prescribed under Section 43(4) of the Code ("Review Period") (and during the period in which the Stay Order was in force and the erstwhile management was in control of the Corporate Debtor (which though was not in the period of 2 years prior to insolvency commencement date).

- 2.4. Sometime in or around 2016-2017, the Corporate Debtor availed of an unsecured loan from the Respondent by entering into the loan agreement. During the period of 15th May, 2016 to 1 December 2017 and thereafter on 1st July, 2018, the Corporate Debtor, in multiple tranches, repaid an amount of INR 2,955.11 crores to the Respondent under the aforesaid loan agreement, in priority to making payments to its secured lenders, and also made payments towards interest on the said unsecured loan amounting to INR 170.45 crores, during the period of 29th March, 2017 to 30th March, 2017, in multiple tranches. By virtue of the Impugned Transaction, the Corporate Debtor has made repayments of unsecured loans and the interest thereon to the Respondent in priority to secured lenders.
- 2.5. Pertinently, for the repayments made on 1 July, 2018, it is to be noted that while the CIRP of the Corporate Debtor was commenced vide the Admission Order dated 15th May, 2016, the CIRP was stayed vide the subsequent Stay Order dated 30th May, 2018, and the interim resolution professional had handed over the control of the Corporate Debtor back to the ex-management of the Corporate Debtor. The CIRP was recommenced by the CIRP Revival Order dated 7 May, 2019 which was passed by this Tribunal subsequent to the Withdrawal Order. Therefore, evidently, during the period between 30th May, 2018 till 7 May, 2019, the ex-management of the Corporate Debtor had complete control over all functions and

operations of the Corporate Debtor, including the Impugned Transaction, which was done on 30 March, 2019. While this transactions done on 1 July, 2018 do not appear to fall strictly within the Review Period, ie, between 15 May, 2016-15 May, 2018, however in view of the peculiar facts of this case, the Applicant has filed this application, including the repayments made on 1 July, 2018, for classification of the Impugned Transaction as a preferential transaction under Section 43 of the Code.

- 2.6. The repayments towards the unsecured loan along with payments of interest thereon as aforesaid have the effect of putting the Respondent in a beneficial position, than it would have been in the event of distribution of assets under liquidation of the Corporate Debtor in accordance with Section 53 of the Code, vis-d-ets the other creditors of the Corporate Debtor by making repayments to it in preference to the secured creditors of the Corporate Debtor. The repayment of the unsecured loan along with the interest thereon amounting to INR 3,125.56 crores falls during a period of 2 years preceding the insolvency commencement date (and during the period in which the Stay Order was in force and the erstwhile management was in control of the Corporate Debtor (which though was not in the period of 2 years prior to insolvency commencement date)), as required under Section 43(4) of the Code.
- 2.7. The Corporate Debtor was in financial distress at the time when payments under the Impugned Transaction were made to the Respondent and the Corporate Debtor had defaulted in payment of other various financial creditors. Pertinently as on 1 July, 2018, the Admission Order had already been passed and the CIRP was only stayed owing to the Stay Order. That the repayments made under the Impugned Transaction were not in the ordinary course of business of the Corporate Debtor considering (1) that the loan taken

from the Respondent, which is a group company, was unsecured in nature, (ii) that payments against such an unsecured loan were preferentially made while not making payments to the secured lenders and financial creditors of the Corporate Debtor; and (iii) no approvals being obtained from the consortium of lenders of the Corporate Debtor prior to making the aforesaid payments.

- 2.8. That the Applicant has analysed the Impugned Transaction and has determined that the same would tantamount to a preferential transaction under Section 43 of the Code. Further, the Impugned Transaction has been analysed/reviewed by the Auditors and even they have concluded that the said repayment of the unsecured loan along with interest thereon is a preferential transaction under Section 43 of the Code. More specifically, the Auditor's Report observes that the repayment of the unsecured loan and interest thereon was made in priority to the secured lenders of the Corporate Debtor, and that the Auditors were informed that no approvals were obtained from the consortium of lenders prior to making the aforesaid payments under the Impugned Transaction
- 2.9. Thus, the Impugned Transaction constitutes a preferential transaction under Section 43 of the Code and the Respondent herein ought to be directed to refund all the monies received by it under the said Impugned Transaction, amounting to INR 3,125.56 crores.
3. The Respondent No.1 filed affidavit in reply dated 13.10.2023 stating that pursuant to the Impugned Transaction during the period from May 15 2016 to March 31, 2019, the Corporate Debtor repaid to the Respondent, the unsecured loan which was availed by the Corporate Debtor from the Respondent. There was a similar adjustment undertaken by the Respondent, which was simultaneously recorded in the books of accounts as repayment of the existing loan.

- 3.1. In view of the aforesaid transaction leading to realization of receivables, the amounts pertaining to impugned transaction are not reflected as an asset of Respondent and therefore dealt with in the resolution plan.
- 3.2. That irrespective of whether the amount in question is being considered as an asset of Respondent in the CIRP of Respondent No. 2 and being dealt with in the Resolution Plan, Section 14(1)(d) of the Code prohibits recovery of any property which is in the possession of the corporate debtor, i.e., the Respondent herein.
- 3.3. The Respondent submits that the Hon'ble Supreme Court in plethora of cases such as *Committee of Creditors of Essar Steel India Limited Through Authorized Signatory v. Satish Kumar Gupta and Ors., (2020) 8 SCC 531.* and *Ghanashyam Mishra & Sons (P) Ltd. V. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657* has held that once the CoC approved resolution plan is approved by the Adjudicating Authority and the corporate debtor is put back on its feet, then no surprise claims should be flung on the successful resolution applicant so that it can start with fresh slate on the basis of the approved resolution plan. Therefore, any reversal of the Impugned Transaction by this Adjudicating Authority would set at naught this principle established by the Hon'ble Supreme Court to provide the successful resolution applicant the business of the corporate debtor on a fresh slate.
4. Heard learned counsel for both sides and perused the records.
- 4.1. In this case, the Applicant as well as Respondent are in CIRP, and the Resolution Plan, in both the case, has been approved by CoC and both these plan are still pending for approval before this Tribunal on account of certain issues arising from plan being sub-judice before Hon'ble Supreme Court in both the cases. Upon payment of these

amounts, even though preferential in nature, the accounts of the parties were settled and the Respondent filed its claim in CIRP accordingly. It is undisputed fact that both the parties are related parties. Neither of the Resolution Plan provides for any payment to the related parties. Accordingly, even if this Tribunal proceeds to pass any Order setting aside the impugned transaction of preferential payments, such Order shall have no consequence as fresh claim even if allowed to be admitted shall have to be dealt with in accordance with the CoC approved plan, which provides NIL amounts towards the claim of the related parties. Accordingly, we are of considered view that this Application has become meaningless and any order in the present application shall be of no consequence. Accordingly, we consider it appropriate to dismiss this application.

5. In view of foregoing, IA 527 of 2022 is dismissed and disposed of accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)