

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

I.A. 289 OF 2022

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

Mr. Anish Niranjan Nanavaty
The Resolution Professional
...Applicant

Vs.

Reliance Communications Infrastructure
Limited
...Respondents

In the matter of

C.P.(IB) No. 1387/MB/2017

Ericsson India Pvt Ltd

Financial Creditor

Vs.

Reliance Communications 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 and Ms.
Divya Jain, Advocates

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This application IA 289/2022 was filed by Mr. Anish Niranjana Nanavaty ("Applicant") in the matter of M/s Reliance Communications 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 as entered into between the Corporate Debtor and the Respondent constitutes an undervalued transactions under Section 45 of the Code,
 - b. Order and declare the aforesaid Impugned Transaction entered into between Corporate Debtor and the Respondents by way of the Impugned Letter dated 30th September, 2017 and acts undertaken in furtherance of the same 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 seeking the setting aside of the preferential transaction entered, by way of a settlement dated 24 September 2018, into between Reliance Communications

Limited ("RCOM" or "Corporate Debtor") and the Respondent Nos. 1 and 2, which are Reliance Communication Infrastructure Limited ("RCIL") and One97 Communications Limited ("One97") respectively ("Impugned Transaction"). The Resolution Professional ("RP"/ "Applicant") of the Corporate Debtor, the Applicant herein, humbly submits that the amount of INR 5.63 crores which was initially receivable by Corporate Debtor from Respondent No.2 / One97, has been adjusted against dues payable to another company, i.e. Respondent No. 1/RCIL as a result of entering into the aforesaid preferential transaction prior to the commencement of the corporate insolvency resolution process ("CIRP") of the Corporate Debtor.

2.1. By an order dated 15th May 2018 ("Admission Order"), this Hon'ble Adjudicating Authority had admitted a company petition and had commenced the CIRP of the Corporate Debtor. Further, by an order dated 18th May 2018, in furtherance of the Admission Order, this Hon'ble Adjudicating Authority was pleased to appoint an interim resolution professional ("IRP") with respect to the Corporate Debtor.

2.2. The Admission Order was challenged by certain shareholders/directors of the Corporate Debtor before the National Company Law Appellate Tribunal ("NCLAT"/ "Appellate Authority"), and stayed by the NCLAT by an order dated 30 May 2018 ("Stay Order"). Thereafter, in view of the subsequent developments, the directors/shareholders withdrew the Appeal filed before the NCLAT and by an order dated 30th April 2019 ("Withdrawal Order"), the NCLAT permitted the withdrawal of the Appeal and also directed this

Hon'ble Tribunal to proceed with the matter in accordance with the law. By an Order dated 7th May 2019 ("CIRP Revival Order"), this Hon'ble Adjudicating Authority directed recommencement of the CIRP of the Corporate Debtor

2.3. In view of the aforementioned orders, the CIRP of the Corporate Debtor was recommenced. It is pertinent to note, by an order dated 9th May 2019, the period between 30 May 2018 and 30 April 2019 has been excluded by this Adjudicating Authority from the calculation of the CIRP. Subsequently, by an order dated 21 June 2019 (published on 28th June 2019) of this Hon'ble Adjudicating Authority, the Applicant has been confirmed as RP. Pursuant thereto, the Applicant, as the RP, has taken over the management and business affairs of the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") with effect from 28th June 2019.

2.4. Vide engagement letter dated 15 July 2019, the Applicant had appointed Grant Thornton India LLP ("Auditor"), 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.

2.5. The Auditor by way of their report dated 9 January 2020, which forms part of the final set of report dated 10 January 2020 ("Auditor's Report"), identified that the that the adjustment of the amount which was initially receivable by the Corporate Debtor from Respondent No.2/One97 to settle the dues of Respondent No.1/RCIL to the extent of INR 5.63 crores by way of the Impugned Transaction would constitute a

preferential transaction under the Code. It is submitted that the adjustment of the receivables has led to Respondent No.1/RCIL being in a beneficial position compared to the other secured creditors/lenders, if the distribution was made in liquidation of the Corporate Debtor. Further, the Corporate Debtor was in financial distress at the time when the receivables were adjusted to settle the dues of Respondent No.1/RCIL.

2.6. In light of the aforesaid, the Applicant most respectfully submits that this Adjudicating Authority be pleased to declare that the Impugned Transaction and acts undertaken in furtherance thereof constitute a preferential transaction under Section 43 of the Code and set it aside, and provide consequent directions under Section 44 of the Code.

3. The Respondent No.1 filed affidavit in reply dated 27.10.2023 stating that pursuant to the Impugned Transaction dated 24.09.2018, the receivable of Respondent No. 2 from the Corporate Debtor was substituted as the receivable from Respondent No. 1. Further, there was a liability owed by Respondent No. 2 to Respondent No. 1, which was simultaneously adjusted against the aforesaid receivable. Therefore, similar to the adjustment of the receivables and payables at the Corporate Debtor, there was a similar adjustment undertaken by the Respondent No. 1, which was simultaneously undertaken.

3.1. In view of the aforesaid, the receivable of Respondent No. 2 from the Corporate Debtor stood adjusted and set-off against the liability owed by Respondent No. 2 to Respondent No. 1 and hence, it is not reflected as an asset of Respondent No. 1

and therefore, not further dealt with in the resolution plan of Respondent No. 1.

3.2. It is respectfully submitted that irrespective of whether the amount in question is being considered as an asset of Respondent No. 1 in the CIRP of Respondent No. 1 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 No. 1 herein.

3.3. As the aforesaid monies stemming from the Impugned Transaction are alleged to have been adjusted towards receivables of Respondent No. 1 prior to CIRP and as on date, there is an ongoing moratorium prevailing in respect of Respondent No. 1 as ordered by this Adjudicating Authority, it is respectfully submitted that this Adjudicating Authority ought to allow the CIRP of Respondent No. 1 to run its due course as per provisions of the Code, and not pass any adverse order in relation to these monies.

3.4. The Respondent No. 1 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 certain issues arising from plan being sub-judice before Hon'ble Supreme Court in both the cases. The transaction in reference in nature of grant of interest free unsecured loans by the Corporate Debtor to Reliance Telecom Limited, the related party. The interest free loans entail the loss of money equivalent to the amount of interest cost to be borne by the Corporate Debtor on such funds, which otherwise have been borrowed from its creditors. The grant of interest free unsecured loans, even though undervalued in nature, would have already been considered as claim of the Applicant in CIRP of the Respondent. As regards notional interest which may have accrued on such loans, we are of considered view that even if such notional interest is ordered, that would enhance the claim of the Respondent, however, it will have no consequence in terms of the treatment accorded to the related parties dues in the resolution plan of the Respondents. 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 being in the nature of undervalued transactions, 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 289 of 2022 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)