

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

I.A. 137 OF 2022

Under Section 45 of Insolvency & Bankruptcy
Code, 2016

Mr. Anish Niranjan Nanavaty
The Resolution Professional

...Applicant

Vs.

Reliance Telecom Limited

...Respondent

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 137/2022 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 above stated Impugned Transaction, i.e. the transaction set out in paragraph No. 9(a)-9(g) as entered into between the Corporate Debtor and the Respondent constitute an undervalued transaction under Section 45 of the Code,
 - b. Order and declare the aforesaid Impugned Transaction, entered into between the Corporate Debtor and the Respondent as being null and void and set-aside the same;
 - c. Order and direct repayment/refund/reversal of the monies received by it from the Corporate Debtor against the Impugned Transaction, i.e. transactions involving the Corporate Debtor giving interest-free loans to the Respondent during FY 2017-18 and FY 2018-19, to the extent of the Impugned Amount (i.e. the interest foregone) amounting to INR 323.02 crores;
 - d. pass appropriate directions, in accordance with Sections 25(j), 45, 48 and 66 of the Code and other applicable provisions of the regulations framed under the Code; and

- e. pass any other relief that this Adjudicating Authority may deem fit.
2. The present Application is being filed in order to seek reversal/repayment of amounts received by Reliance Telecom Limited ("Respondent") as a result of entering into undervalued transactions with Reliance Communications Limited ("RCOM" or "Corporate Debtor"), prior to the commencement of the corporate insolvency resolution process ("CIRP") of the Corporate Debtor.
- 2.1. That by an order dated 15 May 2018 ("Admission Order"), this Tribunal had admitted a company petition and had commenced the CIRP of the Corporate Debtor. Further, by an order dated 18 May 2018 ("Order Appointing IRP"), in furtherance of the Admission Order, this Tribunal was pleased to appoint an interim resolution professional ("IRP") with respect to the Corporate Debtor.
- 2.2. The Admission Order and the Order Appointing IRP was challenged by certain shareholders of the Corporate Debtor before the National Company Law Appellate Tribunal ("NCLAT"), and stayed by the NCLAT by an Order dated 30 May 2018. Thereafter, in view of the subsequent developments, the shareholders withdrew the Appeal filed before the NCLAT and by an Order dated 30th April, 2019, the NCLAT permitted the withdrawal of the Appeal and also directed this Tribunal to proceed with the matter in accordance with the law.
- 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 30th May, 2018 and 30th April, 2019 has been excluded by this Adjudicating Authority from the calculation of the CIRP.
- 2.4. Vide engagement letter dated 15th 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, for the period 15th May, 2016 to 15th May, 2018 ("Review Period").

- 2.5. The Auditor by way of their final report dated 9th January 2020, which forms part of the final set of report dated 10th January 2020 ("Report"), identified that the Corporate Debtor extended loans to the Respondent and other group companies without charging any interest on such loans during the FY 2017-18 and FY 2018-19 and from 1 April 2019 to 30 September 2019, and suffered a notional loss to the tune of Rs. 323.02 crores due to interest foregone. It is submitted that such exemption from interest in the loans extended to the Respondent by the Corporate Debtor amounts to undervalued transaction under Section 45 of the Code. Furthermore, the Corporate Debtor was in financial distress at the time when the interest free loans were extended to the Respondent. Further, the Corporate Debtor had defaulted in payment of various other secured and operational creditors.
- 2.6. In light of the aforesaid, the Applicant most respectfully submits that this Adjudicating Authority be pleased to declare that the waiver of interest on loans granted to the Respondent by the Corporate debtor constitute an undervalued transaction under Section 45 read with Section 46 of the Code, and direct the Respondent to repay/reverse/refund the monies against the said interest free loans to the Corporate Debtor.
3. The Respondent filed affidavit in reply dated 17.10.2023 stating that pursuant to the Impugned Transaction dated FY 2017- 18, FY 2018-19 and 1" April 2019 to 30 September 2019, since the Corporate Debtor had given an interest free loan to the Respondent, no liability towards

interest on the loan was recorded in the books of accounts the Respondent. However, if the Corporate Debtor had charged interest towards the said loan, then it would have been recorded as a liability in the books of accounts of the Respondent.

3.1. In view of the aforesaid transaction the amounts pertaining to the Impugned Transaction are not reflected as an asset or liability of the Respondent and therefore, not further dealt with in the resolution plan of Respondent.

3.2. That irrespective of whether the amount in question is being considered as an asset of Respondent in the CIRP of Respondent 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. There is an ongoing moratorium prevailing in respect of Respondent as ordered by this Adjudicating Authority, it is respectfully submitted that this Adjudicating Authority ought to allow the CIRP of Respondent 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 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. The transaction in reference is in the 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 Plans provide for any payment to the related parties. Accordingly, even if this Tribunal proceeds to pass any Order setting aside the impugned transaction being in 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

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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 137 of 2022 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)