

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

Item No. 34

IA 941/2021 IA 130/2022 IA 139/2022 In C.P.(IB)3025/MB/2019

CORAM:

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

ORDER SHEET OF THE HEARING ON 18.04.2024

NAME OF THE PARTIES: **STATE BANK OF INDIA V/s RELIANCE**
COMMUNICATION INFRASTRUCTURE
LTD.

Section 7 of the Insolvency & Bankruptcy Code, 2016

ORDER

IA No. 941/2021 –

1. Mr. Rishabh Jaisani, Advocate a/w Ms. Kriti Kalyani i/b Shardul Amarchand Mangaldas & Co. for the Applicant.
2. Mr. Sarosh Bharucha, Advocate i/b Mr. Hafeezur Rahman, Advocate appeared for the Respondent.
3. Learned Counsel for the Respondent appears and informs that they have received amended copy yesterday and seeks some time to file reply.
4. List this IA No. **08.05.2024** for hearing.

IA No. 130/2022 –

1. Mr. Udit Raghuwanshi, Advocate i/b Divya appeared for the Resolution Professional/Applicant.
2. The present application is being filed by Resolution Professional seeking the setting aside of the preferential transaction where Reliance Communications Infrastructure Limited (“RCIL”/Corporate Debtor) has

deposited an amount of INR 115 Crores with the Hon'ble Supreme Court of India on behalf of Reliance Communications Limited in respect of payments to Ericsson India Private Limited on 08.01.2019 i.e. prior to the commencement of the Corporate Insolvency Resolution Process of the Corporate Debtor. The Resolution Professional also seeks from this Bench a direction to the Respondent to repay/refund the sum of INR, 115 Crores to the Corporate Debtor as received by it pursuant to the impugned transaction.

3. By an order dated 25.09.2019 (Admission order) this Bench had admitted a company petition and had commenced the CIRP of the Corporate Debtor. By the admission order, this Bench also appointed the Applicant Mr. Anish Niranjana Nanavaty as the Interim Resolution Professional for the Corporate Debtor.
4. On 22.10.2019, the Committee of Creditors of the Corporate Debtor, in their meeting passed a resolution with the requisite voting majority to confirm the appointment of the IRP as the RP.
5. 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.
6. The Applicant had appointed Batliboi and Puruohit, Chartered Accountants ("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, for the period 25.09.2017 to 25.09.2019.
7. The Auditors by way of their report dated 24.09.2020 identified that the impugned transaction, i.e. the amount deposited by the Corporate Debtor with the Hon'ble Supreme Court of India on behalf of Respondent i.e. RCOM, in respect of payments to Ericsson, amounting to INR 115 Crores constitutes a preferential transaction under the Code. It is submitted that

the impugned transaction has the effect of putting the Respondent in a beneficial position vis-à-vis the other creditors of the Corporate Debtor than it would have been in the event of a distribution of assets being made under liquidation of the Corporate Debtor in accordance with Section 53 of the Code. Further the Corporate Debtor was in financial distress at the time when the impugned transaction was undertaken.

8. In the light of aforesaid, the Applicant submits to declare the impugned transaction constitutes a preferential transaction under Section 43 of the code and set it aside and direct the Respondent to repay/refund the sum of INR 115 Crores to the Corporate Debtor as received by it pursuant to the impugned transaction.
9. Heard Counsel appearing for both sides.
10. We note that Corporate Debtor as well as Reliance Communication Ltd. both are under CIRP and the resolution plan in their case has been approved by the CoC. In both the cases the Resolution plan contemplates nil payment to the related party towards their dues. While, in the Resolution plan of the Corporate Debtor has already been approved by this Tribunal, the Resolution plan in the case of the Respondent is pending for approval before this Tribunal. In view of certain issues being subjudice before Hon'ble Supreme Court in that case.
11. Accordingly, we are of considered view that an order in relation to this transaction shall be redundant at this juncture considering that the Resolution plan of Respondent provides nil amount payable to the related parties.
12. In view of aforesaid, IA No. 130/2022 is dismissed and disposed of.

IA No. 139/2022 -

1. Mr. Udit Raghuwanshi, Advocate i/b Divya appeared for the Resolution Professional/Applicant.

2. The present application is being filed by Resolution Professional seeking the setting aside of the preferential transaction where Reliance Communications Infrastructure Limited (“RCIL”/Corporate Debtor) has assigned certain receivable amount to Rs. 100 Crores from Respondent no. 2 i.e. Reliance Bhutan Limited (RBTL) to Respondent no. 1/Reliance Infratel Limited on 31.03.2018 i.e. prior to the commencement of the Corporate Insolvency Resolution Process of the Corporate Debtor.
3. By an order dated 25.09.2019 (Admission order) this Bench had admitted a company petition and had commenced the CIRP of the Corporate Debtor. By the admission order, this Bench also appointed the Applicant Mr. Anish Niranjana Nanavaty as the Interim Resolution Professional for the Corporate Debtor.
4. On 22.10.2019, the Committee of Creditors of the Corporate Debtor, in their meeting passed a resolution with the requisite voting majority to confirm the appointment of the IRP as the RP.
5. 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.
6. The Applicant had appointed Batliboi and Puruohit, Chartered Accountants (“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, for the period 25.09.2017 to 25.09.2019.
7. The Auditors by way of their report dated 24.09.2020 identified that the Corporate Debtor has assigned certain receivable amounting to Rs. 100 Crores from Respondent no. 2/RBTL to Respondent no. 1/ RITL by way of the impugned Transaction and thus constituting a preferential transaction under the Code. It is submitted that the adjustment of the receivables has led to Respondent no. 1/RITL being in a beneficial position

vis-à-vis the other creditors of the Corporate Debtor than it would have been in the event of a distribution of assets being made under liquidation of the Corporate Debtor in accordance with Section 53 of the Code. Further the Corporate Debtor was in financial distress at the time when the impugned transaction was undertaken.

8. In the light of aforesaid, the Applicant submits to declare the impugned transaction constitutes a preferential transaction under Section 43 of the code and set it aside and provide consequent directions under Section 44 of the Code.
9. Heard Counsel appearing for both sides.
10. In the present case, it is not in dispute that the impugned transaction had the effect of paying off Respondent No. 1's antecedent debt in preference over other creditors, and the Respondent No. 1 would have get less than what it got by way of this transaction, as this transaction partly discharged the debt owed by Respondent No. 1 to Respondent No. 2. Undisputedly, the said transaction is within the look back period of two years, as is applicable in case of transaction with the related party. The Respondents have pleaded that this transaction was undertaken in the Ordinary Course of Business.
11. We note that the receivable from Respondent No. 2 by the Corporate Debtor stood adjusted and set-off against the liability owed to Respondent No. 1. Both the Corporate Debtor and the Respondent no. 1 are in CIRP and the Resolution plan in their cases are already approved by this Tribunal. The Resolution Plan in case of Corporate Debtor has not dealt with the claim of Respondent No. 1 against the Corporate Debtor to this extent.
12. The Resolution Plan of Corporate Debtor as well of Respondent No. 1 provides NIL amount payable to the related parties and it is not in dispute that Respondent No. 1 is related party of Corporate Debtor and Respondent

No. 2 is also a related party of Respondent No. 1. Accordingly, we are of considered view that an order in relation to this transaction shall be redundant at this juncture.

13. In view of aforesaid, **IA No. 139/2022** is dismissed.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

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