



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 142 OF 2022

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

Mr. Anish Niranjana Nanavaty
The Resolution Professional

...Applicant

Vs.

Reliance Communications Infrastructure
Limited and Another

...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

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This application IA 142/2022 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 the transaction entered into between the Corporate Debtor and the Respondents through the Impugned Letter, and acts undertaken in furtherance of the Impugned Transaction, constitute a preferential transaction under Section 43 of the Code,
 - b. Order and declare the aforesaid Impugned Transactions by way of the aforesaid Impugned Letter and acts undertaken in furtherance of the Impugned Letter, as being null and void and set aside the same,
 - c. Any other relief, including under Section 44 of the Code, that this Adjudicating Authority may deem fit.
2. The present Application is being filed as the RP has observed that prior to the commencement of the CIRP, the Corporate Debtor had entered into certain transactions falling under section 43 of the Code, in as much as the Corporate Debtor adjusted certain amount which was initially receivable by it from Respondent No.1/ Reliance Communication Infrastructure Limited (RCIL) to settle the dues of Respondent No.2/ Reliance Infratel Limited (RITL), to the extent of Rs. 375 crores, by way of the Impugned Letter dated 31 March, 2017 ("Impugned Letter"), which constitutes a preferential transaction under the Code.
- 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. 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 for the period 15th May, 2016 to 15th May, 2018 ("Review Period"). The Auditors by way of their report dated 9th January, 2020 which forms a part of the final set of report dated 10th January, 2020 ("Auditor's Report"), have identified that the adjustment of the amount which was initially receivable by the Corporate Debtor from Respondent No.1 /RCIL to settle the dues of Respondent No.2/RITL to the extent of Rs. 375 crores under the Impugned



Letter ("Impugned Transaction") would constitute a preferential transaction under the Code.

2.5. In or around 2017, the Corporate Debtor had a receivable from Respondent No.1/RCIL to the extent of Rs.375 crores. ("Receivables"). As on 31 March, 2017, the Corporate Debtor also had payable of Rs. 375 crores to Respondent No.2/ RITL ("Payable"). On 31 March 2017, the Corporate Debtor, the Respondent No.1/RCIL and Respondent No.2/RITL entered into an arrangement by way of the Impugned Letter, whereby the Receivables from Respondent No. 1/RCIL. was adjusted to settle the Payable to the Respondent No.2/RITL to the extent of Rs. 375 crores, Further, in the books of accounts of the Corporate Debtor, the Receivables were adjusted against the Payable to Respondent No.2/RITL to the extent of Rs.375 crores.

2.6. That the adjustment of the Receivables in the aforesaid manner amounts to a preferential treatment under section 43 of the Code by the Corporate Debtor as the said adjustment has the effect of putting Respondent No.2/RITL, in a beneficial position, 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, vis-à-vis the other creditors of the Corporate Debtor by adjusting the amount receivable by it from Respondent No.1/RCIL to settle the dues of Respondent No.2/RITL. The adjustment of the Receivables amounting to Rs. 375 crores falls during a period of 2 years preceding the insolvency commencement date (in the present case 15th May, 2018) as required under Section 43(4) of the Code. The Corporate Debtor was in financial distress at the time when the Receivables were adjusted to settle the dues of Respondent No.2 / RITL to the extent



of Rs. 375 crores and the Corporate Debtor had defaulted in payment of other various financial creditors.

2.7. The adjustment of the Receivables was not in the ordinary course of business of the Corporate Debtor considering (i) that the Corporate Debtor was entitled to receive Rs. 375 crores from Respondent No.I/RCIL which has been adjusted against dues payable to another company, i.e. Respondent No. 2, and (ii) at the time when the Impugned Transaction was undertaken, the Corporate Debtor had defaulted in payment to other various financial creditors but the payables to a related party have been made vide this adjustment, and (iii) absence of discussions / approvals on (a) the Impugned Letter and/or (b) the adjustment of the Receivables in the Minutes of Meetings of the Audit Committee Meetings and the Board Meetings for the review period, i.e. 15th May, 2016 to 15th May, 2018.

2.8. That the Resolution Professional/Applicant has analysed the adjustment of the Receivables and has determined that the same would tantamount to a preferential transaction under Section 43 of the Code. Further, the adjustment of the Receivables has been analysed/reviewed by the Auditors and they have concluded that the said adjustment is a preferential transaction under Section 43 of the Code. More specifically, the Auditor's Report observes that the Receivables adjusted, which were initially receivable by the Corporate Debtor were transferred to Respondent No.2/RITL and subsequently in the books of accounts of the Corporate Debtor, the Receivables were adjusted against the existing payable balance of Respondent No.2/RITL to the extent of Rs. 375 crores.

2.9. It is also pertinent to highlight that the Respondent No. 1/ RCIL was undergoing a CIRP when the Auditor's Report was received and subsequently, a resolution plan submitted by Reliance Projects



and Property Management Services Limited has been approved by its committee of creditors and is presently pending approval before the Adjudicating Authority.

- 2.10. It is also pertinent to highlight that the Respondent No. 2/ RITL was undergoing a CIRP when the Auditor's Report was received and subsequently, a resolution plan submitted by Reliance Digital Platform & Project Services Limited has been approved by this Hon'ble Adjudicating Authority vide its order dated December 03, 2020. The approved resolution plan is however yet to be implemented and presently, the Monitoring Committee constituting 2 representatives each of the successful resolution applicant, the undersigned in his capacity as the insolvency professional therein and 2 representatives of financial creditors State Bank of India and China Development Bank, is overseeing the supervision of the implementation of the approved resolution plan.

That it is submitted that the transaction constitutes a preferential transaction under section 43 of the Code and the arrangement entered into between the Corporate Debtor and the Respondents by way of the Impugned Letter ought to be set aside.

3. The Respondent No.1 filed affidavit in reply dated 17.10.2023 stating that pursuant to the Impugned Transaction dated 31.03.2017, 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. 2, 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. 2 and therefore, not further dealt with in the resolution plan of Respondent No. 2.

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. 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 No. 2 herein.

3.3. As the aforesaid monies stemming from the Impugned Transaction are alleged to have been adjusted towards receivables of Respondent No. 2 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. 2 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



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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 no. 1 & 2 are in CIRP, and the Resolution Plan, in all the case, has been approved by CoC. While the plan in case of Respondent No. 1 & 2 has been approved by this Tribunal, the Plan in case of Applicant is 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 all 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 142 of 2022 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)