

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 642 of 2019

IN

Company Appeal (AT) (Insolvency) Nos. 255-256 of 2018

IN THE MATTER OF:

Punit Garg

...Appellant

Vs.

Ericsson India Pvt. Ltd. & Anr.

...Respondents

I.A. No. 637 of 2019

IN

Company Appeal (AT) (Insolvency) Nos. 257-258 of 2018

IN THE MATTER OF:

Satish Seth

...Appellant

Vs.

Ericsson India Pvt. Ltd. & Anr.

...Respondents

I.A. No. 638 of 2019

IN

Company Appeal (AT) (Insolvency) Nos. 259-260 of 2018

IN THE MATTER OF:

Mr. Suresh Madihally Rangachar

...Appellant

Vs.

Ericsson India Pvt. Ltd. & Anr.

...Respondents

Present: For Appellants: - Mr. Kapil Sibal, Senior Advocate with Ms. Shally Bhasin, Mr. Chaitanya Safaya, Mr. Mahesh Agarwal, Ms. Surabhi Limaye, Mr. Prateek Gupta, Ms. Vaishali Kalera and Ms. Madhavi Agarwal, Advocates.

For Respondents: - Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Sanjay Kapur, Ms. Megha Karnwal, Mr. Bharath and Mr. Kauser Husain, Advocates for SBI.

Mr. Krishnan Venugopal, Senior Advocate, Mr. Sanjay Kapur, Mr. Bharath Gangadharan, Ms. Megha Karnwal and Mr. Kauser Husain, Advocates for IDBI & Ors.

Mr. Vikramjit Banerjee, ASG, Mr. Sanjay Kapur, Mr. Kauser Husain, Ms. Megha Karnwal, Mr. Bharath Gangadharan, Mr. Kauser Husain, Advocates for LIC & Ors.

Mr. Sanjay Kapur, Ms. Megha Karnwal and Mr. Bharath Gangadharan, Advocates for Canara Bank & Ors.

Mr. Sidharth Luthra, Senior Advocate with Mr. Sanjay Kapur, Mr. Megha Karnwal, Mr. Bharath Gangadharan, Mr. Kauser Husain, Advocates for UCO Bank & Ors.

Mr. Anil K. Kher and Mr. Dushyant Dave, Senior Advocates with Ms. Deepali Mittal, Mr. Praveen Kumar Mittal, Advocates for Respondent No.1.

Mr. Divyam Agarwal and Ms. Pallavi Kumar, Advocates for Standard Chartered Bank.

Mr. Arun Kathpalia, Senior Advocate with Mr. P.V. Dinesh, Mr. R.S. Lakshman, Mr. Dhruv Malik, Advocates for Bank of Baroda, Dena Bank, Vijaya Bank.

Mr. Amit Singh Chaddha, Senior Advocate with Mr. Shubh Chakraborti, Mr. Dhruv Malik and Ms. Shrishti Govil, Advocates for non – JLF ECB Lenders.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Pursuant to an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) filed by ‘Ericsson India

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In

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Pvt. Ltd.’- (‘Operational Creditor’), the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, passed three different orders on 15th & 18th May, 2018 initiating the ‘Corporate Insolvency Resolution Process’ against ‘Reliance Infratel Ltd.’; ‘Reliance Telecom Ltd.’ and ‘Reliance Communications Ltd.’ order of ‘Moratorium’ was passed and ‘Interim Resolution Professional (s)’ were appointed. Against the aforesaid orders, these appeals were preferred on one of the grounds that an arbitration proceeding is pending and some order has been passed by the Hon’ble Supreme Court. Besides some other grounds have also been taken to assail the impugned orders.

2. This Appellate Tribunal by order dated 30th May, 2018, on hearing the parties, passed interim order allowing the ‘Financial Creditors’/ ‘Joint Lenders Forum’ with whom the assets of the ‘Corporate Debtors’ have been mortgaged, as also the ‘Corporate Debtors’ to sell the assets of the ‘Corporate Debtors’ and to deposit the total amount in the account of the lead Bank of ‘Joint Lenders Forum’ (‘State Bank of India’). In terms of the agreement, the Chairman, Managing Directors, Directors and other members of the ‘Corporate Debtors’ namely— ‘Reliance Infratel Ltd.’; ‘Reliance Telecom Ltd.’ and ‘Reliance Communications Ltd.’ were directed to pay a sum of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) (jointly) in favour of ‘Ericsson India Pvt. Ltd.’ within 120 days i.e. by 30th September, 2018.

3. 'Reliance Communications Ltd.' moved before the Hon'ble Supreme Court in Writ Petition (Civil) No. 845 of 2018, wherein the Hon'ble Supreme Court noticed the interim order passed by this Appellate Tribunal on 30th May, 2018, by which the Hon'ble Supreme Court also allowed the undertaking given by the Chairmen of the Companies concerned.

4. In another Civil Appeal Nos. 9337-9338 of 2018 filed by 'Indus Towers Limited', the Hon'ble Supreme Court by order dated 23rd October, 2018 refused to interfere with the interim order dated 30th May, 2018 and dismissed the appeals. Interim order dated 30th May, 2018 thereby reached its finality.

5. Subsequently, 'Reliance Communications Limited & Ors.' filed Interlocutory Application for extension of the period of payment on the ground that certain situation was beyond their control. In the meantime, Contempt Petition was filed by 'Ericsson India Private Limited'. The Hon'ble Supreme Court by the order dated 23rd October, 2018 extended the period upto 15th December, 2018 but allowed the 'Ericsson India Private Limited' to revive the Interlocutory Application for contempt, if payment is not being made.

6. Interlocutory Applications were also filed before this Appellate Tribunal for extension of time but in view of the pendency of the matter before the Hon'ble Supreme Court, those Interlocutory Applications were adjourned.

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7. Subsequently, the Writ Petition (Civil) No. 845 of 2018 filed by 'Reliance Communication Limited & Ors.' was taken up along with Contempt Petition (Civil) Nos. 1838 of 2018, 55 of 2019 and 185 of 2019 by the Hon'ble Supreme Court.

8. In those Contempt Petitions, the Hon'ble Supreme Court by Judgment dated 20th February, 2019 held that these three Reliance Companies were guilty of contempt of the Hon'ble Supreme Court. However, with a view to allow the 'RCom Group' to purge the contempt of the Hon'ble Supreme Court it allowed payment to 'Ericsson India Private Limited' of a sum of Rs.453 Crores within a period of four weeks from the date of the said order and in default of such payment, their Chairmen who had given the undertakings to the Hon'ble Supreme Court have been ordered to suffer three months' imprisonment. In addition to the aforesaid sum being paid, a fine amounting to Rs.1 Crore for each Company was also to be paid to the Registry of the Hon'ble Supreme Court.

9. The Hon'ble Supreme Court noticed that a sum of Rs. 118 Crore was deposited by the 'RCom Group' for payment in favour of the 'Ericsson India Private Limited'. The Registry of the Hon'ble Supreme Court was directed to release the said amount of Rs.118 Crores in favour of 'Ericsson India Private Limited'. It is in this background, 'RCom Group' has been allowed to pay further sum of Rs. 453 Crores within four weeks i.e. by 20th March, 2019.

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10. In the meantime, a sum of Rs. 259.22 Crores was received by the 'RCom Group' from the Income Tax Refunds for F.Y. 2015-16 which is lying in the three 'Trust and Retention Account' ('TRAs') of the 'RCom Group' with the 'State Bank of India'. In fact, all receivables of the 'RCom Group' were received in the three 'TRAs'. According to learned counsel for the Appellant- 'RCom Group', there are no monies held outside the three 'TRAs' and the funds lying in it are the only amounts available to make the payment to 'Ericsson India Private Limited'.

11. In the aforesaid background, Interlocutory Applications have been filed for direction on the 'State Bank of India' ('Joint Lenders Forum') to release Rs. 259.22 Crores lying in the three 'TRAs' of the 'RCom Group' with the 'State Bank of India' for making the payment to 'Ericsson India Private Limited' in compliance of the Judgment of the Hon'ble Supreme Court and to discharge the liabilities of the 'RCom Group'.

12. Learned Counsel for the 'RCom Group' by referring to the interim order dated 30th May, 2018 passed by this Appellate Tribunal and the Judgment dated 20th February, 2019 passed by the Hon'ble Supreme Court directing the 'RCom Group' to make the payment of the balance dues to 'Ericsson India Private Limited' submitted that 'RCom Group' can make such payment only from the Bank Accounts i.e. Bank Accounts of the 'Corporate Debtors'. The stand of the lenders for not releasing the amount is contrary to the decision of the Hon'ble Supreme

Court which requires the 'RCom Group' to pay to 'Ericsson India Private Limited'.

13. It was submitted that the directions of this Appellate Tribunal stand superseded by the decision of the Hon'ble Supreme Court in any pre-existing contractual arrangement. As such the consent of the lenders for the release of the amounts in the three 'TRAs' is not required.

14. The grievance of the Appellants is that the respective Directors of the 'RCom Group' have filed applications for withdrawal of their Company Appeals against the orders dated 15th and 18th May, 2018 but the same have not been allowed to be withdrawn till date. It is submitted that despite 47 lenders meeting having taken place, the 'Asset Monetization Process' has been stalled. The consent of the 100% of the lenders has not been received on any issue due to lenders inter-se disagreement. In view of the said non-provision of NOCs/ Consents from the lenders, the intent of Asset Monetization Scheme to resolve the debt outside the scope of the 'I&B Code' has been defeated. Thus, according to the Appellants, the debt of the 'RCom Group' is contemplated to be resolved as per the IBC Process in the interest of all stakeholders, which will be stalled if the amount is not released for payment in favour of 'Ericsson India Private Limited'.

15. It is alleged that the Asset Monetization as proposed by the 'Joint Lenders Forum' has failed only because of the lender inter-se

disagreement. Not a single resolution put forward to the lenders in the last 18 months has received 100% lender approval. Even the issue of buyer/ seller disagreement as recorded in the Judgment of the Hon'ble Supreme Court has now been settled by the Hon'ble TDSAT by its order dated 26th February, 2019.

16. It is also submitted that none of the foreign lenders were ever a part of the 'Joint Lenders Forum' in the first place. After the disbanding of the 'Joint Lenders Forum' by the Reserve Bank of India's Circular dated 12th February, 2018, an 'Inter Creditor Agreement' was required to be signed by all the lenders to authorise the State Bank of India to act on their behalf, but no such 'Inter Creditor Agreement' has been signed till date by all lenders. Therefore, according to learned counsel for the Appellant, the 'TRAs' arrangement is only with the State Bank of India and the consent of all the lenders is neither required nor mandated.

17. Learned counsel appearing on behalf of the State Bank of India, which was lead Bank of 'Joint Lenders Forum', submitted that the accounts of the 'Corporate Debtors' were declared as 'NPAs' as far back as on 26th August, 2016. The total amount due from the 'Corporate Debtors' to the 'Lenders'/ 'Financial Creditors' is approximately Rs. 46000 Crores. The 'Joint Lender Forum' was constituted as far back as on 2nd June, 2017. The said forum *inter alia* resolved that it will be a better course of action to try and maximize recovery by way of asset

monetization and that Insolvency Proceedings will not fetch the maximum result for both the 'Financial Creditors' as well as 'Operational Creditors'. It was in this background, the State Bank of India also moved before this Appellate Tribunal and taking into consideration their stand the interim order was passed on 30th May, 2018.

18. In the present appeals, impleadment of the 'State Bank of India', 'China Development Bank' and the 'Standard Chartered Bank' was allowed on 29th May, 2018 only thereafter interim order was passed on 30th May, 2018.

19. Learned counsel for the State Bank of India submitted that the agreement between the 'Ericsson India Private Limited' and the 'Corporate Debtors' is not interlinked with the agreement reached between the lenders/ 'Financial Creditors' with the Appellants (the Directors of the 'Corporate Debtors'), therefore, no direction should be issued to the 'State Bank of India' or other lenders to release any amount for compliance of agreement between the Appellants and the 'Ericsson India Private Limited'.

20. Referring to the guidelines issued by the Reserve Bank of India and the agreement reached between the 'Corporate Debtors' and the 'Joint Lenders Forum', learned counsel for the 'State Bank of India' submitted that the amount deposited in three 'TRAs' cannot be withdrawn by the 'Corporate Debtors', therefore, no prayer can be

made by them for payment out of the three 'TRAs' including the amount of Rs.259.22 Crores deposited pursuant to refund of the Income Tax of the 'Corporate Debtors'.

21. Referring to the judgment of the Hon'ble Supreme Court dated 20th February, 2019, it was contended that the Hon'ble Supreme Court recognizes the independent nature of the two- sale of assets by Lenders and payment of Rs.550 Crores by 'RCom Group' to 'Ericsson India Private Limited'. Reliance has been placed on different parts of the Judgment of the Hon'ble Supreme Court which will be noticed and discussed at appropriate stage.

22. It was submitted that no action taken against the 'RCom Group' or its Chairmen who have been found guilty in the Contempt Proceedings for non-payment of dues to 'Ericsson India Private Limited' cannot be linked with three 'TRAs' nor any amount can be released out of the Income Tax Refund for purging the 'RCom Group Companies' for contempt.

23. It was submitted that 'RCom Group Companies' have other accounts apart from the three Group Companies and they can clear such dues from the account of rest of the 'RCom Group Companies' who are not the Contemnors/ Respondents.

24. Arguments were also advanced on behalf of the Non-JLF Lenders, namely— (i) 'Industrial and Commercial Bank of China' (ii) 'Emirates NBD Bank PJSC' (iii) 'Doha Bank Q.P.S.C' and (iv) 'VTB Capital PLC',

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who are the direct lenders ('Financial Creditors') to 'Reliance Infratel Limited'.

25. It was submitted that Non-JLF Lenders are direct and secured lenders of one of the 'Corporate Debtors' pursuant to a loan agreement dated 19th March, 2010 as amended and restated on 5th September, 2016 and further amended and restated on 4th December, 2016. According to them, as on date, the current outstanding amount owed by 'Reliance Infratel Limited' to the Non-JLF Lenders amount to Rs.1400 Crores approx. (US\$ 199,000,000) alongwith applicable interest.

26. It was submitted that the clause of the Agreement casts an obligation on 'Reliance Infratel Limited' not to create in any manner any encumbrance over the account. Further, according to him, the Non-JLF Lenders are not bound by the terms of any purported and unilateral settlement agreement and the same cannot be enforced upon them.

27. Reliance has been placed on the decision of the Hon'ble Supreme Court in "***Infrastructure Leasing and Financial Services Ltd. v. BPL Limited- [2015] 3 SCC .363***", wherein the Hon'ble Supreme Court held that the Court must give such a meaning to the term 'class' as will prevent the section being so worked as to result in confiscation and injustice, and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest.

28. Reliance has also been placed on the decision of the Hon'ble Supreme Court in ***Central Bank of India v. Siriguppa Sugars & Chemicals Ltd. & Ors.- (2007) 8 SCC 353***, wherein the Hon'ble Supreme Court held that rights of the Bank over the pawned sugar had precedence over the claims of the Cane Commissioner and that of the workmen.

29. Mr. Krishnan Venugopal, learned Senior Counsel appearing on behalf of the 'IDBI', 'Central Bank of India', 'Union Bank of India' and 'Corporation Bank' submitted that under Section 43 of the 'I&B Code', no preferential payments are permissible to any creditor. Reliance has been placed on the decision of the Hon'ble Supreme Court in ***"Swiss Ribbons v. Union of India- W.P. 99 of 2018"*** and ***"Chitra Sharma and Ors. v. Union of India and Ors.- Writ Petition (Civil) No. 744 of 2017"***

30. In ***"Chitra Sharma and Ors. v. Union of India and Ors."*** (Supra), the Hon'ble Supreme Court by Judgment dated 9th August, 2018 while dealing with the case of home buyers, left the question open as to whether the home buyers are 'unsecured creditors' or 'secured creditors' and observed that directing disbursement of the amount of Rs. 750 Crores to the home buyers who seek refund would be manifestly improper and cause injustice to the secured creditors since it would amount to a preferential disbursement to a class of creditors.

5. Mr. Rajeeve Mehra, learned Senior Counsel appearing on behalf of the 'Standard Chartered Bank' has also taken similar plea and supported the stand taken by the learned Senior Counsel for the 'Joint Lenders Forum'.

6. Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of the Appellants submitted that if the impugned order is stayed and/or set aside, the parties may settle the matter.

7. The case was taken up yesterday (29th May, 2018) and on the request of the parties, the case was adjourned to find out whether the Appellants and the 'Operational Creditors' can settle the matter.

8. Mr. Salman Khursid, Mr. Arun Kathpalia and Mr. Anil Kher, learned Senior Counsel appear on behalf of the 'Operational Creditors' in the respective cases. They submitted that the Respondent-'Ericsson India Pvt. Ltd.'- ('Operational Creditor') has agreed to settle the matter if upfront payment of Rs. 600 Crores (Rupees Six hundred Crores Only) is made by the Appellants/'Corporate Debtors'.

9. Mr. Kapil Sibal, learned Senior Counsel for the Appellants informed that the Appellants have agreed to pay a sum of Rs. 550 Crores (Rupees five hundred fifty Crores only) (jointly) in favor of 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') and sought for 120 days' time to pay the total amount.

10. *Learned Senior Counsel appearing on behalf of 'Ericsson India Private Limited'- ('Operational Creditor'), on instructions from the Respondent, informed that the 1st Respondent has agreed to receive a sum of Rs. 550 Crores (Rupees Five hundred fifty Crores only), if the total amount is paid within 120 days as proposed by the learned Senior Counsel for the Appellants.*

11. *Taking into consideration the stand taken by the parties and the fact that if the 'Corporate Insolvency Resolution Process' is allowed to continue, all the 'Financial Creditors' as also the 'Operational Creditors' may suffer more loss and the Appellants have made out a prima facie case, as agreed and suggested by learned Senior Counsel for the Appellants and learned Senior Counsel for the 'Joint Lenders Forum' and the learned Senior Counsel for the 'Operational Creditor'- 'Ericsson India Pvt. Ltd.', we pass the following orders:*

- i. Until further orders, the impugned orders dated 15th May, 2018 and 18th May, 2018, passed by the Adjudicating Authority, Mumbai Bench in C.P. (IB) 1385, 1386 & 1387 (MB)/2017, shall remain stayed. The 'Resolution Professional' will allow the managements of the 'Corporate Debtors' to function. He may attend the office of the 'Corporate Debtors' till further order is passed by this Appellate Tribunal. Thereby, the 'Corporate Insolvency*

Resolution Process’ initiated against the ‘Corporate Debtors’ namely— ‘Reliance Infratel Ltd.’; ‘Reliance Telecom Ltd.’ and ‘Reliance Communications Ltd.’ shall remain stayed, until further orders.

- ii. *The ‘Financial Creditors’/’Joint Lenders Forum’ with whom the assets of the ‘Corporate Debtors’ have been mortgaged as also the ‘Corporate Debtors’ are given liberty to sell the assets of the ‘Corporate Debtors’ and to deposit the total amount in the account of the lead Bank of Joint Lenders Forum which shall be subject to the decision of these appeals. If the appeals are rejected, in such case, the ‘Financial Creditors’/’Joint Lenders Forum’ and other Banks with whom the amount is deposited, will have to return the total amount in the respective accounts of the ‘Corporate Debtors’.*

- iii. *The Chairman, Managing Directors, Directors and other members of the ‘Corporate Debtors’ namely— ‘Reliance Infratel Ltd.’; ‘Reliance Telecom Ltd.’ and ‘Reliance Communications Ltd.’ are directed to pay a sum of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) (jointly) in favour of ‘Ericsson India Pvt. Ltd.’ within 120 days i.e. by 30th*

September, 2018. In case of non-payment of the amount and part of the same, the concerned appeal(s) may be dismissed and this Appellate Tribunal may direct to complete the 'Corporate Insolvency Resolution Process' and may pass appropriate order. The payment of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) in favour of the 'Operational Creditor' shall be subject to the decision of these appeals. If the appeals are dismissed, the 'Operational Creditor' will pay back the amount to the 'Corporate Debtors'.

12. The Appellants and the 'Operational Creditors' are directed to file their respective affidavits of undertaking in terms of their statement as made and recorded above within 10 days.

Let the appeals be listed 'for admission' on 3rd October, 2018.

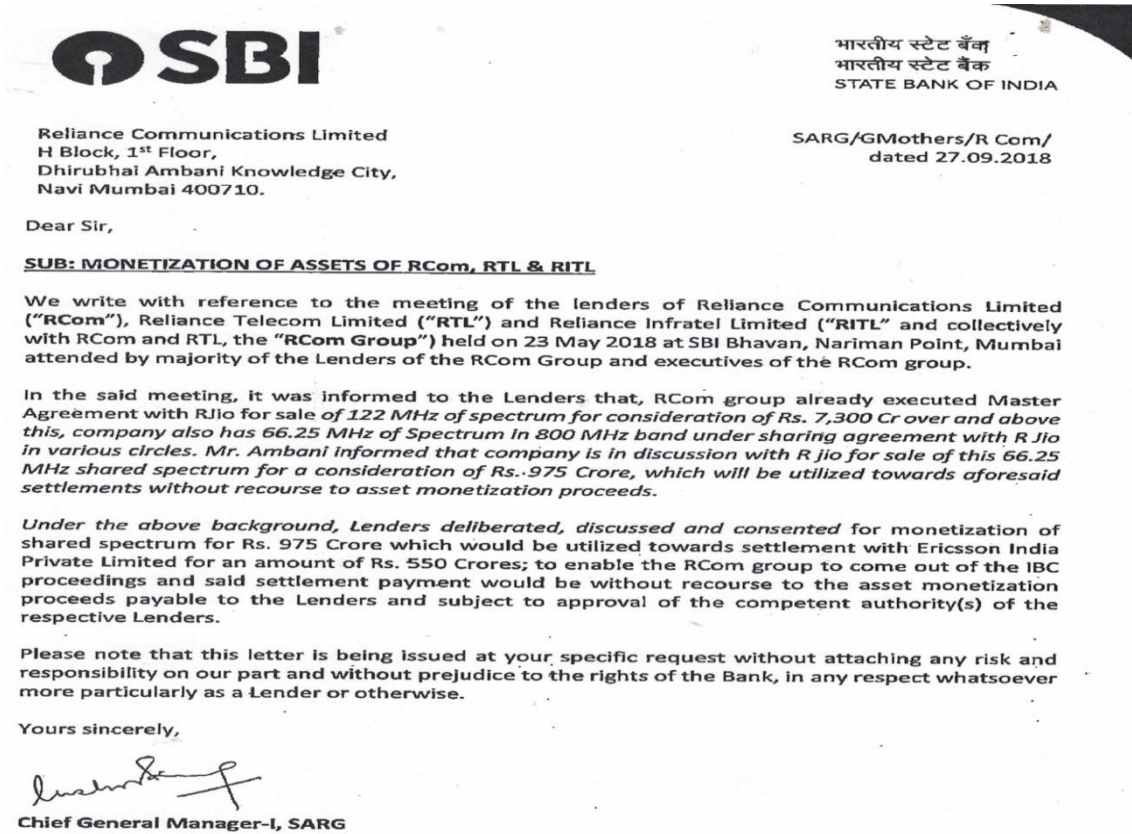
13. In the meantime, it will be open to the parties to file Interlocutory Application if orders and directions given above are not complied. Interlocutory Application Nos. 701-702, 709-710 and 712-713 of 2018 stand disposed of with aforesaid observations and directions."

32. The aforesaid agreement has been affirmed by the Hon'ble Supreme Court in Civil Appeal Nos. 9337-9338 of 2018 "**Indus Towers Limited v. Punit Garg and Ors.**" read with order passed in Writ Petition (Civil) No. 845 of 2018 "**Reliance Communication Limited & Ors. v. State Bank of India & Ors.**"

33. From the aforesaid order, it is clear that the 'Joint Lenders Forum'- ('Financial Creditors') informed that their interests are involved and they intend to recover the amount. They highlighted that in terms of their agreement with the 'Corporate Debtors', if the assets of the 'Corporate Debtors' are sold, the 'Financial Creditors' can recover a sum of Rs. 18,100 Crores approximately. It was also informed that on restructuring and sale of further assets, the 'Financial Creditors' can recover a sum of Rs. 37,000 Crores approximately. In fact, the Bank asked for passing an interim order as otherwise they will not be in a position to recover the amount and there is recurring loss of more than crores per day. Similar plea has been taken on behalf of the 'Standard Chartered Bank'. It was in this background, learned counsel for the Appellant prayed for stay and on instructions agreed to pay a sum of Rs. 550 Crores in favour of 'Ericsson India Private Limited'- ('Operational Creditor') within 120 days.

34. According to learned counsel for the Appellants, the Appellants assured to pay Rs.550 Crores in favour of 'Ericsson India Private Limited' within 120 days in view of the assurance received by the

Appellants from the 'State Bank of India'/ 'Joint Lenders Forum'. In support of such submissions, reliance has been placed on a letter issued by the 'State Bank of India' on 27th September, 2018 to the 'Reliance Communications Limited' intimating the decision taken in the lenders meeting with the three 'Corporate Debtors', as extracted below:



bank.sbi
+91 22 2217 7551
+91 22 2217 7556
data.samg@sbi.co.in

तनामवसल आरलसल सनाधान समूह
कसलरीसल कलम
21वा मजसल, मेकर टावर 'ई',
कफ परेड
मुंबई 400005 - भारत

तनामवसल आरलसल सनाधान समूह
कसलरीसल कलम
21वा मजसल, मेकर टावर 'ई',
कफ परेड
मुंबई 400005 - भारत

Stressed Assets Resolution Group
Corporate Centre
21st Floor, Maker Tower 'E'
Cuffe Parade
Mumbai 400005 - India

35. In reply, it was submitted that in terms of the decision of the Hon'ble Supreme Court, the 'RCom Group' cannot sell any of the assets as mortgaged with the Banks. In such case, if the 'RCom Group' is not

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allowed to withdraw the amount from their Bank Accounts and if no direction is given to the 'State Bank of India' to release the amount of Rs.259.22 Crores of Income Tax Refund from three 'TRAs', then the direction of the Hon'ble Supreme Court to 'RCom Group' to pay the amount cannot be complied with in absence of any other source of income to the three 'Corporate Debtors'. In this regard, the stand of the counsel for the 'State Bank of India' is that apart from the three 'Corporate Debtors' there are other six companies of the 'RCom Group' who may pay the amount or the Chairmen or the Directors may pay the amount to purge them from contempt.

36. The Hon'ble Supreme Court while passing judgment in Contempt cases on 20th February, 2019 noticed similar plea as taken by the 'State Bank of India' before this Appellate Tribunal, as quoted below:

"5. Shri Neeraj Kishan Kaul, learned Senior Advocate appearing on behalf of the Chairman, SBI, has argued that the Joint Lenders' Forum, being allowed to sell assets outside of the corporate insolvency resolution process has nothing to do with the Ericsson transaction. According to him, prayers (c) and (j) of the Contempt Petition No. 185 of 2019 are not reliefs that can be given in a contempt petition.

Also, it is wholly unnecessary to file an

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affidavit stating the total amount received from sale of assets of the corporate debtors post the settlement dated 30.05.2018. Equally, prayer (j), asking for a direction for SBI to bring in amounts due and payable so as to purge itself of contempt does not lie against the Joint Lenders' Forum in view of the fact that the Ericsson transaction is wholly independent of sale of assets.”

37. Having noticed such submissions, the Hon'ble Supreme Court observed:

“.....We have seen that right from the beginning, the sum of INR 550 crore was undertaken to be paid, without having to depend upon any act or omission of a third party. To say that the sum of INR 550 crore would be paid only out of sale of assets of the three Reliance Companies is a deliberate misstatement made in the undertakings as well as the applications for extension of time filed before this Court, which was done with the purpose of circumventing the orders of this Court. We are also of the view that

in the facts of the present case, wilful default is made out, as has been pointed out in this judgment.”

38. The Hon'ble Supreme Court further observed:

“22. At this stage, we may point out that the contempt petition against the Chairman of SBI would not lie inasmuch as the Ericsson transaction and the sale of assets by the Joint Lenders' Forum are completely independent of each other, as argued by Shri Dave himself, and as has been held by us hereinabove. Also, the statement made in paragraph 18 of the Contempt Petition No. 185 of 2019 that, “all the respondents in the contempt petition were bound to have handed over the amount of INR 550 crore to the petitioner on or before 15.12.2018” is patently incorrect inasmuch as respondent no. 4 (SBI) has nothing to do with this amount of INR 550 crore which had to be paid over to Ericsson only by the three Reliance Companies. The contempt petition against the Chairman of SBI is, therefore, dismissed.”

39. While observing so, to give an opportunity, the Hon'ble Supreme Court observed:

“24. Given the facts as aforesaid, we are of the view that the contempt of this Court needs to be purged by payment of the sum of INR 550 crore together with interest till date. As stated by the letter dated 21.01.2019, subject to any calculation error, an amount of INR 453 crore must be paid to Ericsson in addition to the deposit of INR 118 crore made in the Registry of this Court. The Registry of this Court is directed to pay over the sum of INR 118 crore to Ericsson within a period of one week from today. The RCom group is directed to purge the contempt of this Court by payment to Ericsson of the sum of INR 453 crore within a period of four weeks from today. In default of such payment, the Chairmen who have given undertakings to this Court will suffer three months’ imprisonment. In addition to the aforesaid sum being paid, a fine amounting to INR 1 crore for each Company must also be paid to the Registry of this Court within four weeks from today. This sum will be paid over to the Supreme

Court Legal Services Committee. In default of payment of such fine, the Chairmen of these Companies will suffer one month's imprisonment.

Contempt Petitions are disposed of, as aforesaid."

40. The offer and acceptance of payment of Rs. 550 Crores in 120 days emerged out of an agreement arrived at between 'Ericsson India Private Limited'- ('Operational Creditor') and the Appellants (the Directors of the 'Corporate Debtors') in terms of the order dated 30th May, 2018. The said order is not interlinked with one another who are third party, nor contingent on each other inasmuch as the sale of assets by the 'Lenders'/ 'Financial Creditors' was not connected with or affected by the condition of payment of Rs.550 Crores by the 'RCom Group Companies' or their Directors, Shareholders etc. Thereby, while staying the 'Corporate Insolvency Resolution Process' concerning the 'Financial Creditors' and 'Joint Lenders Forum', without any caveat of payment of any money to 'Ericsson India Private Limited' or otherwise, it independently permits the 'Financial Creditors'/ 'Joint Lenders Forum' to sell the assets of the 'Corporate Debtors' and to deposit the same in an Escrow Account of the lead Bank i.e. the State Bank of India, subject to outcome of the appeal pending before this Appellate Tribunal.

41. From the findings of the Hon'ble Supreme Court, it is also clear that the payment of dues of Rs. 550 Crores to 'Ericsson India Private Limited'- ('Operational Creditor') by three Reliance Companies has not been linked with the assets of the 'State Bank of India'/ 'Joint Lenders Forum' or any other Bank, who are third party to the settlement between the three Reliance Companies and the 'Ericsson India Private Limited'. By interim order dated 30th May, 2018, this Appellate Tribunal noticed the terms of the agreement/ settlement between the parties. One of the terms of the settlement is with the 'RCom Group' and the 'State Bank of India'/ 'Joint Lenders Forum'. The other part of the settlement/ agreement is between three Reliance Companies and 'Ericsson India Private Limited'- ('Operational Creditor'). Once such settlement is reached, it is for the parties to comply with the terms of settlement without any interference by this Appellate Tribunal. This Appellate Tribunal is only to find out whether the parties have settled the matter in terms of the order dated 30th May, 2018 or have failed to settle. On failure, it is open to this Appellate Tribunal to vacate the interim order of stay dated 30th May, 2018 and in absence of any merit, the appeal can be dismissed.

42. As per the interim order, the 'Financial Creditors'/ 'Joint Lenders Forum' with whom the assets of the 'Corporate Debtors' have been mortgaged have been allowed to sell the assets of the 'Corporate

Debtors' and to deposit the total amount in the 'Joint Lenders Forum' subject to the decision of these appeals. It was made clear that if the appeals are rejected, the 'Financial Creditors'/ 'Joint Lenders Forum' and other Banks with whom the amount is deposited, will have to return the total amount in the respective accounts of the 'Corporate Debtors'.

43. Admittedly, the 'Financial Creditors'/ 'Joint Lenders Forum' and other Banks have failed to recover any amount by selling the mortgaged properties of the 'Corporate Debtors' in spite of the interim order of stay passed on 30th May, 2018. We have also noticed that the 'Corporate Debtors'- 'Reliance Infratel Ltd. '; 'Reliance Telecom Ltd.' and 'Reliance Communications Ltd.' have failed to pay the total amount of Rs. 550 Crores (jointly) till today. As per the interim order, in case of non-payment of the amount and part of the same, the concerned appeal(s) may be dismissed and this Appellate Tribunal may direct to complete the 'Corporate Insolvency Resolution Process' and may pass appropriate order. The payment of Rs. 550 Crores in favour of 'Ericsson India Private Limited' is also subject to the decision of the appeals.

44. Learned counsel appearing on behalf of the 'State Bank of India' and other Banks informed that it is not possible for them to sell the assets and, therefore, suggested that the 'Corporate Insolvency Resolution Process' may continue. No specific reply has been given by the counsel appearing on behalf of the 'Ericsson India Private Limited'

when we asked that once we dismiss the appeals and allow the 'Corporate Insolvency Resolution Process' to continue, then in terms of the order dated 30th May, 2018, the 'Ericsson India Private Limited'- ('Operational Creditor') will have to pay back the total amount to the 'Corporate Debtors' through the 'Resolution Professional'. In this background, we are of the view that the parties should take steps to ensure that settlement in terms of the order dated 30th May, 2018 is made in its letter and spirit to save three 'Corporate Debtors' from the 'Corporate Insolvency Resolution Process' enabling the 'Financial Creditors' i.e. the 'State Bank of India' and other Banks and 'Ericsson India Private Limited'- ('Operational Creditor'), to recover maximum dues. Otherwise this Appellate Tribunal will have no option but to vacate the interim order dated 30th May, 2018.

45. In view of the observations made above, in an appeal filed under Section 61 of the 'I&B Code', no direction can be given to any party to the settlement (particularly the third party) to perform certain duties to ensure settlement between other parties.

46. However, as the Hon'ble Supreme Court is in seisin of the matter, we are not vacating the interim order dated 30th May, 2018 nor passing any direction to refund any amount to any one or other party, till some order is passed by the Hon'ble Supreme Court.

47. However, this order will not come in the way of the Appellants to ask for relief as sought for in this interim application from the Hon'ble

Supreme Court, which has the jurisdiction to pass appropriate order under Article 142 of the Constitution of India (*Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.*).

48. For the reasons aforesaid, no interim order is passed in these Interlocutory Applications in question and they stand disposed of.

Let the appeals be listed 'for orders' on 8th April, 2019.

The parties will inform the development to this Appellate Tribunal so as to consider whether for failure of compliance, the interim order passed on 30th May, 2018 is to be vacated or not.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI

15th March, 2019

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