

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

I.A. 329 OF 2021

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules 2016

The Best Towers Private Limited

...Applicant

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: 26/10/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Ms. Priyanka Dadpe i/b Agam Doshi, Advocate
For the Respondent/RP	:	Mr. Rishabh Jaisani a/w Ms. Kriti Kalyani, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 329/2021 was filed by M/s Best Towers Private Limited (“Applicant”) in the matter of M/s Reliance Communication Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (“Code”) in the Corporate Insolvency Resolution Process (“CIRP”), seeking an order of this Tribunal for setting aside the Advertisement dated 07.05.2019 inviting submission of claim; for rejection of the Resolution Plan pending for approval before this Tribunal; and for impleading the Applicant in the Plan Approval Application as Respondent.
2. M/s Ericsson India Pvt. Ltd., filed one application, namely CP (IB)1387/2017, before this Tribunal on 11.09.2017 seeking initiation of CIRP in the case of Corporate Debtor u/s 9 of the Insolvency and Bankruptcy Code 2016, and the same was allowed vide its order dated 15.05.2018, appointing one Interim Resolution Professional (IRP) namely Manish Dheeraj Lal Kaneria on 18.05.2018.
 - 2.1. The IRP thereafter in terms of Section 13(1)(B) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 issued a public notice on

21.05.2018 inviting claims from all the stakeholders/creditors calculating their claim as on 15.05.2018 to be submitted on or before 01.06.2018.

2.2. In the meantime, the order of initiation of insolvency proceeding dated 15.05.2018 was stayed by the Hon'ble NCLAT New Delhi vide Order dated 30.05.2018 in Company Appeal (AT) (Insolvency) 255-256, 257-258 and 259-260 all of 2018. The order of stay dated 30.05.2018 was vacated on 30.04.2019 and therefore, the Order in CP (IB) 1387/2017 got restored.

2.3. The IRP thereafter issued a fresh notice on 07.05.2019, in terms of Section 13 (1) (B) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code-2016, inviting claims from the stakeholders/creditors as on 07.05.2019.

3. It is the case of the applicant that the IRP made a false statement that the Hon'ble Tribunal had orally directed to invite claim as on 07.05.2019 in place of 15.05.2018, as the applicant has recently, while examining the orders passed by this Hon'ble Tribunal, read the order dated 09.05.2019 and from perusal thereof it transpired that the Interim RP had filed one MA bearing MA No. 1757/2019 in CP (TB) 1387 (MB)/2017 for grant of two reliefs, i.e., firstly for exclusion of the entire periods during which the matter remained stayed by the order of the Hon'ble NCLAT, New Delhi & secondly for declaration that

07.05.2019 should be treated as date for the invitation of the claim/Insolvency commencement date, from the Creditors.

3.1. This Tribunal after considering totality of the matter allowed the first prayer i.e., exclusion of the period from 30.04.2018 to 30.04.2019, but rejected the second prayer with regard to declaration that 07.05.2019 should be treated as Insolvency commencement date, instead of 15.05.2018.

3.2. The applicant also claims to have also examined the final order passed by this Tribunal, approving the resolution plan with respect to Reliance Infratel Limited Case No. CP (IB) 1385/2017, and from perusal of the order, it clearly transpires that in the case of Reliance Infratel Ltd as well, the IRP committed serious forgery and fraud by inviting claims as on 07.05.2019 by putting a word in the mouth of adjudicating authority. The notice dated 07.05.2019 states that the date i.e., cut off date / Insolvency commencement date, ie 07.05.2019 was fixed by the oral order of the adjudicating authority whereas from perusal of the order dated 09.05.2019, passed in MA No. 1757/2019 in CP (IB) 1387 (MB)/2017, it would transpire that the Adjudicating Authority rejected the prayer of the IRP with regard to fixation and shifting of cut off date / Insolvency commencement date as 07.05.2019 instead of 15.05.2018

3.3. It is alleged that the direct impact of shifting of the Insolvency commencement date on 07.05.2019 in place of

15.05.2018 would result in at least 15-20% hike/gigantic enhancement, due to application of additional Interest for the extended period in the claims of the Creditors including the secured creditors, unsecured creditors and financial creditors whose amount are in several thousand crores. Only because of change of Insolvency commencement date the person who has maximum amount of debt will gain maximum illegal benefit, through application of additional Interest from 15.5.2018 to 07.05.2019. The petitioner has also come to know that loan of the secured creditors are to the tune of approximately Rs 30,000 Cr- 40,000 Cr, and therefore, there would be gigantic Net-Enhancement of their claims may be around Rs. 8,000 Cr.

3.4. The present Resolution Professional is well aware about the aforementioned illegality and gigantic impact of the change of the date for invitation of claim, but with a view of show& project himself naive innocent filed one application bearing M.A. No. 2562 of 2019 with a prayer to the Tribunal to pass necessary directions allowing the RP to issue revised public announcement for re-inviting claims from the creditors, the insolvency commencement date, as on 15.05.2018 in terms of Regulations 6(1) and Regulation 13 of the CIRP Regulations.

3.5. The aforementioned filing of the application bearing M.A. No. 2562 of 2019 was nothing but an eye wash, a well-crafted enactment of mischievous Drama, and a part of

conspiracy on the part of RP and possibly at the behest of the Members of the CoC (being the dominant beneficiaries, in the instant nefarious game of Shylock-ism), as the Learned Counsel for the RP did not press the application and argued that the matter may be considered as and when any objection is raised by any aggrieved person' and accordingly the Tribunal dismissed the M.A. No. 2562 of 2019 vide order dated 22.02.2020. 14. The applicant has recently come to know about the impact of change of the claim submission date.

4. The Resolution professional has filed affidavit in Reply dated 15.09.2021 stating that the application is meritless and misconceived and thus, ought to be dismissed with heavy costs. The Respondent has submitted that fresh claims were invited in view of change in the financial position of the Corporate Debtor in the interregnum on account of stay on CIRP.
5. We have heard the Learned Counsel and perused the material available on record.

5.1. We find that the Order passed in MA No. 1757 of 2019, this Tribunal observed that "There is no occasion to pass any declaration..." and further held "Therefore, we do not need to give any declaration at this stage to give an effect as to what should be the date for the invitation of the claims".

5.2. We find force in the argument of the Respondent that the claim for stay period, which was for almost a year, cannot be ignored and have to be factored in the CIRP of the

Corporate Debtor. We feel that the publication of second Advertisement for invitation of claim was more in the interest of the claimants so as to allow them another opportunity to file their claims, if left out, as well to the persons who became creditor during the stay period. We do not find any objection having been raised by the CoC in this relation.

5.3. As regards allegation of the applicant that second Advertisement was with a motive to enhance the claims of the existing creditors, we do not find force in that contention at least qua applicant, who itself claims interest till the CIRP date in IA 1138/2020 at rates prescribed under MSME Act, because shifting of CIRP date would have benefited the applicant more than the others in terms of percentage of claim share. Accordingly, we feel that this application is nothing but to seek intervention in the Plan approval process and is thus abuse of provisions of section 60(5) of the Code.

5.4. As regards prayer for supply of copy of Resolution Plan Application, it is trite law that the Resolution Plan is a confidential document till it is approved by this Tribunal and only the financial creditors are eligible to receive copy of such plan. There is no doubt on this legal proposition. Further, the applicant being an operational creditor whose claim has been admitted by the Resolution professional can not be made a Respondent and given opportunity to object to the approval of the plan.

6. In view of above findings, we dismiss the application IA 329 of 2021. We further impose a cost of Rs. 50,000/- upon the applicant to be deposited in Bharatkosh within 15 days from the date of communication of this Order.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)