

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

I.A. 88 OF 2020

Under Section 60(5) of the IBC, 2016 r/w
NCLT Rules, 2016.

Telecom Regulatory Authority of India
... **Applicant**

V/s

Reliance Telecom Limited
... **Respondents**

In the matter of

C.P. (IB)No.1386/MB/2017

Ericsson India Private Limited

... **Petitioner**

V/s.

Reliance Telecom Limited
... Corporate Debtor

Order delivered on: 05/12/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant

: Mr. Kanishk Khetan,
Advocate

For the Respondent

: Mr. Gaurav Joshi, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This IA 88/2020 is filed on 20.12.2019 by M/s Telecom Regulatory Authority of India (TRAI), a statutorily constituted body established under Section 3 (1) under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) (TRAI Act) (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Reliance Telecom Limited (“Corporate Debtor”) under Section 60(5) of the Insolvency and Bankruptcy Code (“Code) seeking following reliefs –
 - A. an order directing the Resolution Professional to ascertain the unspent balance and security deposit payable to the subscribers and make provisions for the same in the resolution plan;
 - B. Pass an order directing the Resolution Professional to allow for payment of statutory dues amounting to Rs. 85,10,000/- to the Applicant; and/or
 - c. pass such other order / directions as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case
2. The CIRP commenced on 15.05.2018, and was stayed for some time after its resumption on 7.5.2019 upon vacation of the stay. The Resolution Professional appointed to carry out CIRP in the case of this Corporate Debtor intimated the Applicant of his appointment and requested it to file a claim with the RP on 3.7.2019. Prior to this, the Interim Resolution Professional requested it to file a claim with the IRP on 9.5.2019.
3. The Corporate Debtor is engaged in provision of Mobile Telephony Services in terms of the license granted by Department of Telecommunications (“DOT”), Government of India. The Resolution Plan in the case of the Corporate Debtor was approved on 4.3.2020, by the Committee of Creditors (“CoC”), and is pending approval in terms of section 30(2) of the Code before this Bench.

4. It is the case of the applicant that TRAI has been entrusted with discharge of certain functions, inter alia, to ensure compliance of terms and conditions of license, regulate the telecommunication services, protect the interests of service providers and consumers of the telecom sector.

4.1. TRAI in exercise of the powers conferred upon it under section 36 read with section 11(1) (b) (i) and (v) of the TRAI Act, has made the Standards of Quality of Service for Basic Telephone Service and Cellular Mobile Telephone Service Regulations, 2009 (7 of 2009) (QoS Regulations).

4.1.1. Pursuant to such Regulations, the Applicant passed the six Orders under QoS Regulations during the period from 26.12.2016 to 31.07.2018 directing the Corporate Debtor to deposit sums as financial disincentives under these Orders, which aggregates to Rs. 81,50,000/-, and the same was unpaid on the Insolvency Commencement Date. These Orders, except order dated 31.7.2018, were passed prior to Insolvency Commencement Date, and the Order dated 31.7.2018 levying financial disincentives amounting to Rs. 2,00,000/- was passed during the stay period when the CIRP was stayed.

4.1.2. The Applicant has relied upon the Hon'ble Supreme Court decision in the case of *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd., 2023 SCC OnLine SC 842*.

4.2. The Applicant has also raised another claim towards unspent balance and Security deposits collected from the subscribers. The Corporate Debtor had collected consideration for provision of Telephony Services to its subscribers under its "Prepaid Plans", and as on the date of termination of its services, there were unspent balances under such plans purchased by its prepaid subscribers, accordingly, such money made up of unspent balance in each prepaid connection is claimed to belong to the subscribers.

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- 4.3. The Corporate Debtor is stated to have terminated its Telephony Services operations in the Telecom Circle of Assam, Bihar, Himachal Pradesh, Kolkata, Madhya Pradesh, North East. Orissa, and West Bengal on accounts of is termination of telephony licenses. Accordingly, it is claimed that such unspent balances were required to be refunded back to the subscribers in terms of the License Agreement with DoT, or in alternate to be contributed to the Telecommunications Consumers Education and Protection Fund.
- 4.4. The present application is filed before this Hon'ble Tribunal seeking appropriate directions against the Resolution Professional to refund the unspent balance to the subscribers of the corporate Debtor in compliance of the directions issued by the Applicant in accordance with the TRAI Act, and Regulations thereunder. Further the Applicant prays before the Hon'ble Tribunal to pass an order directing the Resolution Professional to allow for payment of statutory dues amounting to Rs. 85,10,000/- to the Applicant.
5. The Resolution Professional filed an affidavit in reply stating that the Intelligent Network software license, which stored Pre-paid Subscribers Database, got expired due to non-payment of their dues in 2018, accordingly, the details of each subscriber's unspent balance can not be retrieved therefrom, thus making the task of identification of quantum of such unspent balances impossible. It is also stated that the Applicant has also not filed any claim on behalf of subscribers towards this sum. As regards refund of security deposit, the Respondent has stated that the refund of security deposit to Post Paid subscribers was an automated process whereby within 60 days of disconnection, the customer would be refunded. Thus, majority of the post-paid customer would have been refunded.
- 5.1. The Respondent has also submitted that the terms and conditions of the customer application form clearly provides that the Corporate Debtor will not grant refund of residual talk time value, and may also forfeit/adjust/apply subscriber's deposits. The Corporate Debtor was not maintaining separate bank account, and all deposits were

mixed/merged. Further, prior to CIRP, the Corporate Debtor created an email ID where pre-paid subscribers could request for a refund. The corporate debtor informed TRAI of the said email ID vide letter dated 5.12.2018.

6. We heard the Counsel and perused the material available on record.
 - 6.1. It is undisputed fact that this Application was filed prior to approval of plan by the CoC.
 - 6.2. It is undisputed fact that the demand towards financial disincentive under QoS Regulations for an aggregate sum of Rs. 79,50,000/- was raised prior to commencement of CIRP and demand of Rs. 2,00,000/- was raised during the period, when the CIRP process was stayed by Hon'ble NCLAT. It is also undisputed that the Corporate Debtor had received security deposits from its Post-paid Subscribers and Telephony Charges on Prepaid basis in advance from its Prepaid Subscribers, and there were certain unspent balances under such prepaid plans and refund of security deposits, which were due for refund prior to commencement of CIRP.
 - 6.3. The main contention of the Resolution Professional is that the Applicant has not filed the claim, however, it is not disputed that these liabilities in the form Security Deposit from Subscribers and Unspent Balance of Prepaid Customers are duly accounted for in the books of accounts in accordance with the accrual system and recognition of liabilities principles. In the case of *Puneet Kaur, through her Attorney Amrit Pal Singh vs. K V Developers Private Limited Company Appeal (AT) (Insolvency) No. 390 of 2022*, the Hon'ble NCLAT held that "*The liability towards those Homebuyers, who have not filed their claim exists and required to be included in the Information Memorandum. Further, under Regulation 36, sub-regulation 2(l), there is column for other information, which the Resolution Professional deems relevant to the Committee. The liabilities which have been undertaken by the Corporate Debtor, huge money received by the Corporate Debtor from Homebuyers, whose claims, which could not be filed within time, could*

not be wished away by the Resolution Professional, on the convenient ground that claims have not been filed by such Homebuyers. The purpose of CIRP of Corporate Debtor is to find out all liabilities of the Corporate Debtor and take steps towards resolution. Unless all liabilities of the Corporate Debtor are not known or included in the Information Memorandum, the occasion to complete the CIRP shall not arise”.

- 6.4. It is undisputed fact, the liabilities on account of Refundable Security Deposit, and unspent balance of Prepaid Subscribers, must be duly reflecting in the books of account of the Corporate Debtor, and the only handicap pleaded by the Resolution Professional is unavailability of the subscriber wise details thereof, these liabilities can not be said to have extinguish till the Resolution Plan is approved by this Bench in terms of Section 30(2) of the Code. It is also undisputed fact that these amounts became payable/refundable on account of sudden failure or shutdown of the Network by the Corporate Debtor prior to CIRP commencement
- 6.5. We further find that sub-regulation (1) of Regulation 3 of the Telecommunication Consumers Education and Protection Fund Regulations, 2007 provide that –

“Without prejudice to any order or direction of the Appellate Tribunal or any court or other tribunal or any other provision of the Act or any other law for the time being in force, every service provider, who has collected from its subscribers any amount in excess of,---

- i. The rates of telecommunication service determined under any regulation or order or direction made under the Act, in a case where the rates have been determined and notified under subsection (2) of section 11 of the Act; or*
- ii. The rates announced by the service providers, in a case where the rates have been notified as rates under market forbearance under sub-section (2) of section 11 of the Act,*

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Which has not been refunded to the concerned subscribers and lying as unclaimed with the service providers, shall, ---

- a) In a case where a direction has been made by the Authority under section 13 or any other provisions of the Act, within a period of thirty days, after being so directed, transfer the excess amount so collected to the credit of the Telecommunication Consumers Education and Protection Fund, or*
- b) In case where no direction has been made by the Authority under section 13 or any other provisions of the Act, within a period of thirty days, after expiry of twelve months from the date on which such amount became due for refund (including interest thereon, if any,) or after the expiry of the period of limitation specified under 3 any law for the time being in force for refund of such amount, whichever is later, transfer the excess amount so collected to the credit of the Telecommunication Consumers Education and Protection Fund.”*

6.6. We have no hesitation to hold that about of security deposit balances refundable to post paid subscribers and amount of un-spent balances in prepaid plans are the money collected in excess of the rates prescribed by TRAI. As this amount remains unpaid as on date of commencement of CIRP, this amount which is outstanding of the books of the Corporate Debtor as liability in aggregate is liable to be paid into Telecommunication Consumers Education and Protection Fund in accordance with Regulation 3 of Telecommunication Consumers Education and Protection Fund Regulations, 2007. Accordingly, amount of Security Deposit, and unspent balance of Prepaid Subscribers shall be admitted as Operational Debt.

6.7. As regards demand on account of financial disincentive levied by TRAI we of the considered view that the said amount is a nature of Operational Debt other than Government dues, as this dues are a nature of fine for

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non-maintenance of quality standards only. In this regard , we find that the Hon’ble Supreme Court at Para 49 has analysed the decision in the case of Rainbow Papers and held that

“Rainbow Papers (supra) did not notice the ‘waterfall mechanism’ under Section 53 – the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.”

7. In view of the foregoing the IA is allowed in terms of aforesaid directions.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

V.G. Bisht
Member (Judicial)