

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

**MA NO. 3286/2019 IN  
CP (IB)/1386 (MB)/2017 and  
MA NO. 3369/2019 IN  
CP (IB)/1387 (MB)/2017**

*In the matter of Insolvency and Bankruptcy  
Code, 2016; and*

*An application under Section 60(5) r/w  
Section 9 of the Insolvency and Bankruptcy  
Code, 2016 and regulations thereunder;  
and*

*In the matter of* **MA NO. 3369/2019**

**ANISH NANA VATY**

Resolution Professional

For Reliance Telecom Ltd.

.... Applicant

Versus

**ERICSSON INDIA PRIVATE  
LIMITED**

.... Respondent

*And*

*In the matter of* **MA NO. 3287/2019**

**ANISH NANA VATY**

Resolution Professional

For Reliance Communications Ltd.

.... Petitioner

Versus

**ERICSSON INDIA PRIVATE  
LIMITED**

..... Corporate Debtor

**Order Pronounced on 10.12.2025**

***Coram:***

**Sh. Prabhat Kumar**

**Sh. Sushil Mahadeorao Kochey**

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

---

***Appearances:***

For the Applicant : Adv. Rishab Jaiswani a/w  
Ms. Kriti Kalyani, Adv. Richa Bharti i/b  
Shardul Amarchand Mangaldas & Co.

For the Respondent : Sr. Adv. Pessy Mody a/w Adv. Rohan Kapadia,  
[in MA 3286/2019 in CP (IB) /1387 (MB)  
2017] Sr. Adv. Anil Kher Adv. Ashwin  
Ankhad, Adv. Atishay Suresh [in MA  
3369/2019 in CP (IB) /1387 (MB) 2017]

---

**ORDER**

**Brief Facts:**

1. The present Miscellaneous Applications MA 3286 of 2019 & MA 3287 of 2019 are filed under Section 60(5) read with Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) by **Anish Niranjana Nanavaty** ("hereinafter referred to as the Resolution Professional/Applicant") of **Reliance Telecom Limited** (“RTL/Corporate Debtor”) and **Reliance Communications Limited** (“Rcom/ Corporate Debtor”) respectively against **ERICSSON INDIA**

**PRIVATE LIMITED** (“Respondent/Ericsson”) seeking directions by this Tribunal for refund of monies received by the Respondent from the Corporate Debtor(s) as per the order of Hon’ble National Company Law Appellate Tribunal (“NCLAT”).

2. The relief sought vide Miscellaneous Application No. 3286/2019 in Company Petition No. 1386(MB) of 2017 is;

*a. Order and direct Ericsson India Pvt. Ltd. to pay to the Applicant on behalf of the Corporate Debtor all monies received by it from the Corporate Debtor, including a sum of Rs. 67.50 Crores, along with interest thereon at the rate of 12% p.a, from the order of the Hon’ble NCLAT dated 30<sup>th</sup> April, 2019 till the date of due repayments, in line with the Order of the Hon’ble NCLAT dated 30<sup>th</sup> May, 2018.*

3. The relief sought vide Miscellaneous Application No. 3369 of 2019 in Company Petition No. 1387 of 2017 reads as follows :

*a. Order and direct Ericsson India Pvt. Ltd. to pay to the Applicant on behalf of the Corporate Debtor all monies received by it from the Corporate Debtor, including a sum of Rs. 257.51 Crores, along with interest thereon at the rate of 12% p.a, from the order of the Hon’ble NCLAT dated 30<sup>th</sup> April, 2019 till the date of due repayments, in line with the Order of the Hon’ble NCLAT dated 30<sup>th</sup> May, 2018.*

4. The brief facts and background forming the subject matter of the present Interlocutory Application are identical in substance and sequence to the facts narrated in **MA/3286/2019 in CP (IB) 1386/MB/2017**. The events leading to the initiation of CIRP, the settlement recorded before the Hon’ble NCLAT and the Hon’ble Supreme Court, the payments made pursuant to such orders, the subsequent withdrawal of the appeals, and the Applicant’s later claim seeking refund of the amounts paid, all arise from the same continuum of transactions and judicial directions in both the Applications. Accordingly, these applications

are taken together and the facts pertaining to MA 3286 of 2019 are taken for the purpose of adjudication of both applications.

### **Facts of the case**

5. On the basis of the Managed Service Agreement (“**MSA**”) dated 25.01.2013 (deployment of employees for rendering services) entered between Ericsson and RCL, RTL & Reliance Infratel Limited (“**RITL**”), Ericsson (Operational Creditor) filed the original Company Petition(s) for the claim of Rs. 9,78,72,06,974/- as on 31.03.2017, against each of the three Reliance Companies for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) viz. against RITL for defaulted in paying RS. 4,27,21,40,509/- , against RTL for default in paying Rs. 114,54,46,238/-, and against Rcom for defaulted in paying Rs.436,96,20,227/- as on 31.03.2017. The present application is in relation to the recovery of amounts transferred in the settlement process by the Reliance Group vide Hon’ble NCLAT order dated 30.05.2018 (“**NCLAT Stay Order**”), allegedly preferentially to the Respondent, and in contravention of the IBC’s distribution norms.
6. The Applicant states that the Corporate Insolvency Resolution Process (“**CIRP**”) was initiated pursuant to an application filed under Section 9 of the Code by Ericsson before the National Company Law Tribunal, Mumbai Bench, which was admitted by order dated 15.05.2018 (“**Admission Order**”). Further, Ms. Mitali Shah was appointed as the Interim Resolution Professional vide Order dated 18.05.2018. During the CIRP period of the Corporate Debtor, it has been observed by the Resolution Professional that certain payments were made to one Operational Creditor, Ericsson, after the initiation of CIRP in terms of NCLAT Stay Order, which is in priority over other creditors.
7. Mr. Punit Garg, directors and Shareholders of RCL, Mr. Satish Seth, director of RTL and Mr. Suresh Madhihal Rangachar, director of RITL, challenged the

Order(s) passed by this Tribunal admitting these three companies in Corporate Insolvency Resolution Process (“CIRP”) orders by filing *Company Appeal (AT) (Insolvency) No. 255-256 of 2018, 257-258 of 2018 and 259-260 of 2018* before the NCLAT, wherein impleadment of State Bank of India, China Development Bank and Standard Chartered Bank was also allowed.

8. In these three appeals, the Hon’ble NCLAT passed an interim order dated 13.05.2018 (“**NCLAT Order**”). In the NCLAT Stay Order, the submissions of the Financial Creditors were recorded, including that they had reached an agreement for sale of assets of the Reliance companies through which the lenders expected recovery of approximately Rs. 18,100 crores and, through restructuring and asset sale, recovery could be about Rs. 37,000 crores. The NCLAT Stay Order further records as quoted below;

*“8. Mr. Salman Khurshid, Mr. Arun Kathpadia 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. has agreed to settle the matter if affront 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 sum of Rs. 550 Crores (Rupees Five Hundred and Fifty Crores only) jointly in favour of ‘Ericsson India Pvt. Ltd.’ and sought for 120 days’ time to pay the total amount.*

*10. Learned Senior Counsel appearing on behalf of ‘Ericsson India Pvt. Ltd.’ on instructions from the respondent, informed that the 1<sup>st</sup> Respondent has agreed to receive a sum of Rs. 550 Crores (Rupees Five Hundred and Fifty Crores only), if the total amount is paid within 120 days as proposed by the learned Senior Counsel for the Appellants.”*

9. The Applicant states that based on the consensual statements made by (a) the Senior Counsel for the three Appellants, (b) the Senior Counsel for the Financial Creditors, and (c) the Senior Counsel for Ericsson, the Hon'ble NCLAT passed the following Order;

*“i. Until further orders, the impugned orders dated 15<sup>th</sup> May, 2018 and 18<sup>th</sup> 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 30<sup>th</sup> 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 Debtor'."*

10. Thereafter, the RCL, RTL & RITL filed *Writ Petition (Civil) No. 845 of 2018* on 17.06.2018 before the Hon'ble Supreme Court in terms of Article 142 of the Constitution seeking quashing/closure of the CIRP due to the settlement with Ericsson. In that proceedings, by order dated 03.08.2018, the Hon'ble Supreme Court directed strict adherence to the 120 days' timeline for payment which was to end on 31.09.2018 and requiring Chairman of the Reliance Companies to file an undertaking in this regard. Consequently, undertakings dated 09.08.2018 were filed before the Court by the Chairman of the Reliance Companies. Since, the payment was not made by 30.09.2018, Ericsson filed Contempt Petition No. 1838 of 2018 before the Hon'ble Supreme Court on 01.10.2018. Pursuant to *Interlocutory Application No. 141871 of 2018*, Reliance sought extension of sixty days for payment, the Court granted the extension vide Order dated 23.10.2018, however a second extension application seeking further time was rejected by the Hon'ble Supreme Court on 13.12.2018 as withdrawn.
11. On 02.01.2019, Second Contempt Petition no. 55 /2019 was filed against Mr. Anil Ambani (RCL), Mr. Satish Sheth (RTL) and Ms. Chhaya Virani (RITL), since no payment was made. A letter dated 21.01.2019, by the advocates of the Reliance companies informed the Hon'ble Supreme Court that Rs. 118 crores had been deposited with the Registry and that approximately Rs. 570 crores remained outstanding including interest, with the balance Rs. 453 crores to be paid on 31.01.2019, subject to a condition to withdraw the two contempt petitions and pending arbitration proceedings. Eventually, the third *Contempt Petition (No. 185 of 2019)* was filed and disposed of by the Hon'ble Supreme Court on 20.02.2019, which inter-alia records as follows :

18. It may be pointed out that in their reply to the Contempt Petition No. 55 of 2019, RCom and its group companies had stated that they were “disabled” from paying the amount of INR 550 crore plus interest; that they “were and are unable to pay”; and finally, that:

“XXX XXX XXX

39. The Respondents had submitted the Undertaking on behalf of RCom Group Companies based on the lenders’ consent for monetization of the Other Spectrum for Rs. 975 crores and in the genuine hope and bonafide belief that Asset Monetization Scheme would be implemented and Ericsson shall be paid an amount of Rs. 550 crores along with interest, however, the same has become impossible to be achieved.

XXX XXX XXX” .....

19. Obviously, the letter dated 21.01.2019 by the advocates on behalf of the Reliance Companies would belie each of the aforesaid statements made in the said reply affidavit. There is, therefore, no doubt whatsoever that the three Reliance Companies have wilfully not paid the sum of INR 550 core plus interest and have thus breached the undertaking given to this Court.

20. Another disturbing feature of the reply affidavit filed in this Court by the Chairman of RCom to Contempt Petition No. 55 of 2019 is the statement that RCom has not taken or received any advantage on account of the undertaking submitted before this Court. This, again, is a wholly incorrect statement, given the fact that a writ petition was filed in this Court seeking quashing of the corporate insolvency resolution process on settlement of the matter with Ericsson, which could not be achieved without such undertaking being given to the Court. We are of the view that any unconditional apology given that there was no intention to make any wrongful undertaking or that the undertaking was submitted bona fide must be rejected. It is clear that this reply affidavit clearly demonstrates

*the cavalier attitude of the deponent of this affidavit to the highest court of the land.*

12. It was concluded in the Order dated 20.02.2019 at Page 34 thereof that “.....*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.....*” Accordingly, it was held at Para 24 that “.....*the contempt of this Court needs to be purged by payment of the sum of INR 550 crore together with interest till date..... 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 Chairman who have given undertakings to this Court will suffer three months’ imprisonment.....*”
13. On 18.03.2019, a sum of approximately Rs. 461.74 crores was paid to Ericsson by Reliance companies i.e. Reliance Realty Ltd. (RRL), Reliance Communication Infrastructure Ltd. (RCIL) and Reliance Tech Services Ltd. (RTSL).
14. Subsequently, RTL, RCL and RITL filed I.A. No. 49321 of 2019 in Writ Petition No. 845 of 2018 on 26.03.2019 in a Writ Petition stating that although payment was made, they would have to accept continuation of CIRP. The Hon’ble Supreme Court disposed of the writ and contempt petitions on 24.04.2019, following which the NCLAT on 30.04.2019 allowed withdrawal of appeals, vacated all interim orders including the stay, and directed the Tribunal to continue the CIRP.

### **Applicant's submissions**

15. The Applicant submits that payments amounting to Rs. 550 crores, including Rs. 67.50 crores from the Corporate Debtor i.e. RTL, were made to Ericsson solely under the consensual Supreme Court order without any adjudication of its entitlement, resulting in a preferential payment that ignored other creditors' claims and violated the IBC. The insolvency had commenced on 15<sup>th</sup> May 2018, was stayed on 30<sup>th</sup> May 2018, and resumed when the stay was lifted on 30<sup>th</sup> April 2019. The Resolution Professional sought a refund from Ericsson through a letter dated 22<sup>nd</sup> August 2019, but Ericsson denied its payment liability on 04<sup>th</sup> September 2019.
16. Various Interlocutory Applications were filed before the Hon'ble NCLAT on 16<sup>th</sup> September 2019 seeking a refund direction, the Hon'ble NCLAT disposed them of on 18<sup>th</sup> September 2019, leaving the issue to be decided independently by this Tribunal. Accordingly, this application is filed under Section 60(5) of the IBC seeking a direction to Ericsson to refund the preferential payments to be redistributed as per the Code.
17. Though not pleaded in the application, the applicant's Counsel, alternatively, also impugned the said payments in terms of Section 14 of IBC as being made in contravention thereof. It was also submitted by the Applicant's Counsel that RRL, RCIL and RTSL have filed claims in the CIRP of respective Corporate Debtor for the amounts paid to Ericsson after commencement of CIRP and the same have been admitted.

### **Submissions on Behalf of The Respondent / Corporate Debtor :**

18. The Respondent has challenged the Application on following grounds :
  - a. The Application tantamount to contempt of order dated 20.04.2019 passed by Hon'ble Supreme Court and this Tribunal would not have required the Respondent to file its reply vide order dated 6.11.2019 as there is no

jurisdiction to entertain such an application after the entire lis between the parties to these proceedings are concluded by Order dated 20.04.2019 passed by Hon'ble Supreme Court in exercise of its jurisdiction under Art 142 of the Constitution of India.

- b. The Respondent had received the said amount pursuant to the orders/directions passed by Hon'ble Supreme Court and the Resolution Professional ought to have sought review of said order before that Court;
- c. There is no preferential transaction within Section 43 of IBC as no payment was made from the Corporate Debtor thereby a fundamental statutory requirement under Section 43(2) that the transfer must involve the assets or property of the Corporate Debtor is not met. Further, the payment was not made within look back period but during the CIRP period.
- d. The payment to Respondent was not in violation of Section 14 moratorium.
- e. NCLAT order dated 30.05.2018 does not survive after having been vacated in terms of Order dated 30.04.2019 and consequent upon withdrawal of appeal and not dismissal of the appeal, a condition precedent in the order dated 30.05.2018.

### **Analysis & Findings**

19. The Tribunal heard the learned counsels appearing for both the parties and perused the material available on record.
20. The Respondent has raised the issue of jurisdiction of this Tribunal to entertain the present application stating that the application filed after the entire lis between the parties to these proceedings are concluded by Order dated 20.04.2019 passed by Hon'ble Supreme Court in exercise of its jurisdiction under Art 142 of the Constitution of India can not lie as this would tantamount to contempt of Order dated 20.04.2019 passed by this Tribunal on the part of the Applicant. It is noted that the Applicant had filed Applications {IA No. 2885, 2886, 2887 & 2888 of 2019 in Company Appeal (AT) (Insolvency) No. 255-256 of 2018 before Hon'ble NCLAT seeking refund of the amounts

received by Ericsson from Reliance Group in terms of NCLAT stay order. These applications came to be disposed of vide order dated 18.09.2019 stating that “.....*The issues being important, the Resolution Professional may raise such issues independently before the Adjudicating Authority and if so required, may file application under Section 65 {sic 60(5)} with appropriate prayer.....*”

a) Section 60(5) of IBC provides that “*Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction<sup>11</sup> to entertain or dispose of (a) any application or proceeding by or against the corporate debtor or corporate person; (b) .....; (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code*”.

b) The issue raised in the present application pertains to claim of Corporate Debtor against Ericsson in terms of Section 43 or alternatively in terms of Section 14 (as argued) of IBC and such issue arises out of insolvency resolution proceeding of the RTL, which commenced in terms of Admission Order passed by this Tribunal, we are of considered view that this Tribunal has the jurisdiction to adjudicate the present application.

21. The Respondent has also raised the issue of continuance of CIRP proceedings after settlement of debt in default owed to Ericsson, at whose behest the CIRP proceedings were commenced in terms of the Admission Order. It is also stated by the Respondent in its reply dated 16<sup>th</sup> December, 2019 that its Civil writ Petition No. 550 of 2019 filed on 16.04.2019 before Hon’ble Supreme Court is pending and where the Corporate Debtor settles its claim with Financial/Operation Creditor prior to constitution of CoC, the CIRP process ought to be terminated under Section 12A of the Code, and no order can be passed in terms of Section 43 of IBC.

- a. It is pertinent to note that the Hon'ble NCLAT in its order dated 30.04.2019 passed in relation to withdrawal of the appeal had categorically stated that *“The Adjudicating Authority (National Company Law Tribunal) will proceed with the matter in accordance with law.”* This clearly indicates that the Admission Order passed by this Tribunal remained in force and Hon'ble NCLAT, despite being fully aware of payment of settlement amount to Ericsson viz. Original Petitioner, had not recorded any finding about closure of CIRP process in terms of Section 12A of the Code. Indubitably, neither any application was ever filed before this Tribunal for withdrawal of CIRP process in terms of Section 12A of the Code nor was there any stay on operation of CIRP order in Civil writ Petition No. 550 of 2019 (stated to be pending before Hon'ble Supreme Court), accordingly, it can not be contended that the continuance of CIRP proceedings and appointment of Applicant as resolution professional is not permissible under IBC. It is trite law that the CIRP process is in rem after passing of Admission Order, and withdrawal of CIRP process is permissible in accordance with the provisions of Section 12A of the Code read with regulation 30A of CIRP Regulations. Accordingly, we do not find any merit in this contention raised by the Respondent in its reply.
- b. As regards submission that the present application tantamount to contempt of order dated 20.04.2019 passed by Hon'ble Supreme Court, it is trite law that a contempt of Court's Order can be raised only before the Court whose orders are alleged to be violated. Further, what the applicant ought to have done, if aggrieved, can not be a ground to challenge the present application, which has to be adjudicated on its own merits. Accordingly, we do not find any merit in this contention raised by the Respondent in its reply.
22. The Applicant has sought the refund of the amount stated in the prayer contending that the payment of money by the Corporate Debtor to the Respondent constitutes a preferential transaction under section 43 of IBC. It is

also contended by the Applicant that this payment was made to Ericsson in terms of NCLAT Stay order, which categorically had contemplated that *“If the appeals are dismissed, the 'Operational Creditor' will pay back the amount to the 'Corporate Debtor'”*, accordingly, in terms of said order the amount received by Ericsson from Corporate Debtor ought to be refunded back. It was also alternatively argued, though not pleaded, that the said payment having been made after commencement of CIRP period are in violation of moratorium provisions contained in Section 14 of IBC, hence the said amounts are liable to be refunded back in terms thereof also. It was submitted by the Ld. Counsel for the Applicant that though the amounts were paid by Reliance Group companies, other than RTL/RCL/RITL, however, the companies, who had paid the amounts to Ericsson, have filed their claim in the CIRP of respective corporate debtor and their claim has been admitted by the Applicant in the CIRP, accordingly, the amounts, though paid by Reliance Group Companies, effectively were paid on behalf of the respective Corporate Debtor. Further, it was emphasised that proviso to Section 43(3) provides that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor, accordingly, the money if any paid pursuant to Supreme Court directions or in terms of NCLAT order does not stand excluded from the purview of Section 43 of IBC.

23. Per contra, it was argued by the Ld. Counsel for the Respondent that amount was paid by Reliance Group Companies, other than Corporate Debtor and these amounts were paid after commencement of CIRP, hence, provisions of Section 43 are not attracted. It was also argued that there is no preferential transaction within Section 43 of IBC as no payment was made from the Corporate Debtor thereby a fundamental statutory requirement under Section 43(2) that the transfer must involve the assets or property of the Corporate Debtor is not met. Further, the payment was not made within look back period but during the CIRP period, but was made after commencement of CIRP, accordingly, Section 43 is not applicable.

24. As regards applicability of Section 43 of IBC, it is pertinent to note that Hon'ble NCLAT in case of ***ICICI Bank Ltd v. Mr. Shailendra Ajmera RP of Ruchi Soya Industries Ltd., (2019) ibclaw.in 397 NCLAT*** had allowed the appeal in relation to transactions, entered on or after commencement of CIRP, impugned as preferential in terms of Section 43 of IBC. It was held that *“the transactions made on 8th December, 2017; 11th December, 2017 and 14th December, 2017 are either on the date of commencement of the ‘corporate insolvency resolution process’ or during the pendency of ‘Corporate Insolvency Resolution Process’.. Therefore, in terms of sub-section (4) of Section 43 of the ‘I&B Code’ the transaction, in question, cannot be treated to be made ‘one year preceding the insolvency commencement date’.”* The appeal filed against said order were withdrawn by the Resolution Professional to file appropriate proceedings before the appropriate Forum vide order dated 16.10.2024 passed in Civil Appeal No(s). 8911/2019, thus giving up his case in terms of Section 43 of IBC in that case. Accordingly, we are of considered view, that section 43 of IBC is not applicable to the present case, as the impugned payments, indubitably, were made after commencement of CIRP on 15.05.2018.

25. It was also argued that since, no money was paid by transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein, hence there is no contravention of Section 14 of IBC. Accordingly, next question is whether the impugned payments can be said to have been made in contravention of Section 14 of IBC, which, inter-alia, bars transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein after declaration of moratorium, which was declared on 15.05.2018 by this Tribunal. It is pertinent to note that there is no quarrel as to effect of NCLAT stay order and continuance of moratorium during the period of stay on CIRP remained in force after vacation of stay, which had to have retrospective effect. The parties

were ad-idem that the moratorium remained in force during the period NCLAT stay remained in force and the properties or assets of the Corporate Debtor could have only be dealt with in terms of said order, which had granted liberty to Financial Creditors/Joint Lenders forum to monetise the assets of Corporate Debtor and deposit the proceeds thereof in separate account. The said stay Order had also recorded that “*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.*” and further that “*If the appeals are dismissed, the 'Operational Creditor' will pay back the amount to the 'Corporate Debtor'.*”

26. There is no dispute that the amounts received by Ericsson were paid by RRL, RICL and RTSL, who have filed their claims in the CIRP of respective Corporate Debtor and the same has been admitted by respective Resolution Professional. Nonetheless, it is admitted fact that no amount was paid from the assets or properties of the Corporate Debtor, hence, there can not a question of contravention of any moratorium under section 14 of IBC necessitating refund these amounts on account of contravention of moratorium as was the case in *Axis Bank Limited versus Asset Reconstruction Company (India) Ltd. 2025 SCC OnLine NCLAT 1224*, wherein the Hon’ble NCLAT noted the principle of Restitution as laid down in *South Eastern Coalfields Ltd. v. State of M.P. (2203) 8 SCC 648* and *Indore Development Authority v. Manoharlal (2020) 8 SCC 129* and held at Para 108 that “.....*The benefit taken under the interim order has to be restored by the Axis Bank and other lenders, which is the principle recognized by law. We have already referred the judgment of the Hon’ble Supreme Court where applying the principle of restitution, directions have been issued to restore the benefits taken under the interim order. Thus, the submission on behalf of the lenders that doctrine applies only inter-parties does not help them in the present case.*” In this case, it is pertinent to note that the amounts were withdrawn money from the account of Corporate Debtor as recorded in Para 22(V) of the said order. Accordingly, though there is no

quarrel on the principle of Restitution, however, the facts of present case are different than the facts in case of Axis Bank (Supra), as the amounts in the present case came out from the third parties and not from the assets or properties of the Corporate Debtor.

27. Nonetheless, it is pertinent to note the relevant part of order in case of South Eastern Coalfields Ltd (Supra) quoted at Para 103 in Axis Bank Ltd. (Supra), which states that *“In law, the term “restitution” is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See Black’s Law Dictionary, 7th Edn., p. 1315).”*
28. It is also pertinent to note the relevant part of order in case of Indore Development Authority (Supra) quoted at Para 105 in Axis Bank Ltd. (Supra), which states that *“The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In South Eastern Coalfields Ltd. v. State of M.P. [South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648] , it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case lis is lost.”*
29. In the present case, the assets and properties of the Corporate Debtor, as available to its creditors as on commencement of CIRP i.e. 15.05.2018 remained intact and there is no quarrel on this proposition. The principle of Restitution as explained in Southern Eastern Coalfields (Supra) contemplates return or restoration of some specific thing or compensation for benefits derived from a wrong done to another or compensation or reparation for the loss caused to another. It has further been explained in Indore Development Authority

(Supra) that this principle requires the parties to be placed in the same position but for litigation. Proviso to Section 43(3) of IBC is also based on same principle. However, as noted earlier that the creditor's entitlement towards their debts due remained unaffected as the properties/assets available for settlement of their debts at commencement of CIRP remained unchanged. It can not be said by any stretch of argument that (i) any specific asset or property of the Corporate Debtor was taken away by Ericsson; or (ii) any benefit was derived by it by causing wrong to another creditor or any loss was caused to another creditor by receiving the payments in question outside the asset fund of Corporate Debtor. Since, none of the creditors of Corporate Debtor are effected by payments made to Ericsson, the question of placing the creditors in same position as they were at the time of commencement of CIRP does not arise in any scenario. As regards restoration of Ericsson in the same position as it was on the date of commencement of CIRP is concerned, that cannot be ordered by this Tribunal as it would mean asking Respondent to pay back the amounts to the persons, who paid it initially. The restoration of amounts to the coffer of Corporate Debtor would, instead, benefit the other creditors as it would add to the assets/properties of the Corporate Debtor as were available as on CIRP commencement, which is not in line with the principle of restitution as explained in Southern Eastern Coalfields as well as Indore Development Authority.

30. Any accretion to the property or assets of the Corporate Debtor as available on CIRP commencement date can only happen in case (i) an order in terms of avoidance or fraudulent transaction is passed by this Tribunal; (ii) the Corporate Debtor's business is run as going concern and there is positive cash flow during those operations; or (iii) by raising interim finance by incurring corresponding obligation to return said finance in priority. The present application seeking order in form of avoidable transaction in terms of Section 43 does not fall within the scope of said section and no arguments were made if the impugned

transaction falls under any of the provisions relating to avoidance or fraudulent transactions.

31. In our considered view, merely because a claim was filed by payer(s) of amounts received by Ericsson and was admitted by Resolution Professional, can not per-se establish that the said payments were made by these persons for and on behalf of Corporate Debtor. No evidence to that effect has been placed on record by the Applicant, even though the Ld. Counsel for the Applicant was asked to clarify by this Tribunal whether the payer(s) made payments on basis of request made by the Corporate Debtor. Nonetheless, we consider it appropriate to refrain from commenting on admissibility of claims made by the RRL, RICL and RTSL in CIRPs of Corporate Debtor, as the relevant issue is not before us and is also not required to be adjudicated by us for adjudication of issues raised in the present application.
32. Accordingly, in our considered view, the principle of restitution as canvassed by Ld. Counsel for the Applicant is not applicable to the facts of the present case. Further, no payment was made out of assets or properties of Corporate Debtor, accordingly, there is no contravention of Section 14 of IBC.
33. Having said so, it is pertinent to look into last contention that the Respondent is obligated to refund the moneys received by it as the amounts were paid to it pursuant to NCLAT stay order, which had categorically recorded that *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 30<sup>th</sup> September, 2018..... 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 Debtor'*

34. It was contended by the Respondent that the amounts were received pursuant to Order passed by Hon'ble Supreme Court in contempt proceedings and not pursuant to NCLAT stay order, hence the stipulation as regards refund of money received by Ericsson as contained in NCLAT stay order does not apply. It was also argued that, nonetheless, the NCLAT stay order stands vacated after withdrawal of appeals and is not applicable since the appeals were withdrawn and not dismissed, a pre-requisite for refund of money as stipulated in NCLAT stay order.
35. Ld. Counsel for the Applicant relied on various judicial decision on principle of "approbate/reprobate". It is noted that the NCLAT stay order had not obligated the Corporate Debtor to pay, it had only recorded the terms of settlement between the Corporate Debtor and Ericsson whereby the Corporate Debtor was to pay settlement amount within 120 days failing which the appeals filed by the directors of Corporate Debtor were liable to be dismissed, and in case of such dismissal, Ericsson was obligated to refund the amount to the Corporate Debtor. It is also pertinent to note that similar directions were given to Financial Creditors/Joint Lenders Forum who were allowed to monetise the assets of the Corporate Debtor during the stay period to keep such proceeds of monetisation in separate account and return the amounts to the Corporate Debtor.
36. It is also pertinent to note that the non-payment of settlement amounts in terms of NCLAT stay order had no contemptuous consequences as is clear from the consequences of non-payment stated therein as "*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'*". The said stay order also required the Corporate Debtor to

file an undertaking within 10 days, which was filed thereat. On perusal of said undertaking(s), it is clear that those undertakings before Hon'ble NCLAT were filed on behalf of Corporate Debtor, and the Corporate Debtor(s) had undertaken to pay the settlement amount jointly by 30.09.2018. Thus, this directions for refund were in sync with the principle of Restitution and the undertakings filed on behalf of Corporate Debtor obligating Corporate Debtor to pay the settlement amount having been accepted by Hon'ble NCLAT further clarifies that the payments was to be made by the Corporate Debtor who was to take itself out of CIRP process. Accordingly, the amounts paid by third persons does not attract the directions of Hon'ble NCLAT.

37. At this juncture, it is pertinent to refer to Order dated 20.02.2019 passed by Hon'ble Supreme Court in three contempt proceedings as well as Writ Petition (Civil) No. 845 of 2019 (filed on 17.07.2019) where at Para 8, it was observed that *“9. On 03.08.2018, the writ petition was filed before this Court was taken up. It is important to note that this writ petition expressly states that this Court was approached so that it could pass orders under Article 142 of the Constitution of India to quash/close the corporate insolvency resolution process..... A reading of this order also leaves no manner of doubt that the undertakings that were to be given by the Chairman of the Companies concerned were only that the payment of INR 550 crores was to be made on or before 30.09.2018. There is no doubt whatsoever that there was no linkage with any sale of assets of these Companies”*. Thereafter, the Hon'ble Supreme Court recorded undertaking dated 09.08.2018 filed by the Chairman of Corporate Debtor in compliance of its order dated 03.08.2018 and noted that these undertakings are contrary to the undertakings given by authorised persons of these very Companies pursuant to the NCLAT order dated 30.05.2018 as the undertakings filed on 09.08.2018 made the payment of settlement amounts conditional upon the sale of assets of the companies. It further recorded that an application for further extension of 60 days has been filed again linking the payment with the sale of assets, which was protested by Ericsson. Accordingly,

the Hon'ble Court held that it would be open for Ericsson to contend that the undertaking given to this Court was not as per this Court's order. At para 18 of the said Order, the Hon'ble Court has also noted the reply of Reliance Companies that RCom and its group companies were "disabled" from paying the amount of INR 550 crore plus interest; that they "were and are unable to pay"; and finally, that :

"xxx xxx xxx

39. *The Respondents had submitted the Undertaking on behalf of RCom Group Companies based on the lender's consent for monetization of the Other Spectrum for Rs. 975 crores and in the genuine hope and bona fide belief that Asset Monetization Scheme would be implemented and Ericsson shall be paid an amount of Rs. 550 crores along with interest, however, the same has become impossible to be achieved.*

xxx xxx xxx"

38. At para 19 of said order dated 20.02.2019, the Hon'ble Supreme Court concluded that *the three Reliance Companies have wilfully not paid the sum of INR 550 crore plus interest and have thus breached the undertakings given to this Court. Para 20 of the said Order further records that; "20. Another disturbing feature of the reply affidavit filed in this Court by the Chairman of RCom to Contempt Petition No. 55 of 2019 is the statement that RCom has not taken or received any advantage on account of the undertaking submitted before this Court. This, again, is a wholly incorrect statement, given the fact that a writ petition was filed in this Court seeking quashing of the corporate insolvency resolution process on settlement of the matter with Ericsson, which could not be achieved without such undertaking being given to this Court. We are of the view that any unconditional apology given that there was no intention to make any wrongful undertaking or that the undertaking was submitted bona-fide must be rejected. It is clear that this reply affidavit clearly demonstrates the cavalier attitude of the deponent of this affidavit to the highest court of the land."*

39. Finally, the Hon'ble Supreme Court vide order dated 20.02.2019 stated that  
*“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 Rs. 550 crores together with interest till date. As stated by the letter dated 21.01.2019, subject to any calculation error, an amount of Rs. 453 crore must be paid to Ericsson in addition to the deposit of Rs. 118 crores made in the Registry of this court..... The Rcom group is directed to purge the contempt of this by payment to Ericsson of the sum of Rs. 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 Rs.1 crore for each company must also be paid to the Registry of this Court within four weeks from today.....”*

40. The above clearly demonstrates that the payment of money to Ericsson was consequential to the purging of Contempt of Hon'ble Supreme Court only. Accordingly, it can also not be said that the said payment was made to Ericsson pursuant to NCLAT stay order. This is also evident from recording at Para 18 of the Order dated 20.02.2019. Accordingly, we do not find any merit in the contention of the applicant that the money paid to Ericsson pursuant to NCLAT stay order, and hence, is required to be refunded back in accordance thereto.

### ORDER

41. The Petition bearing **MA /3286/2019 in CP (IB)/1386 (MB)/2017 and MA /3369/2019 in CP (IB)/1387 (MB)/2017** filed by Anish Niranjana Nanavaty, the Resolution Professional of the Corporate Debtor under Section 60(5) against **Ericsson India Private Limited** (Operational Creditor) are **dismissed and disposed of**.

42. Ordered accordingly.

**Sd/-**

**Prabhat Kumar**

Member (Technical)

/VB/

**Sd/-**

**Sushil Mahadeorao Kochey**

Member (Judicial)