

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1246 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance
Infratel Ltd. ... *Applicant*

V/s

Chief Officer,
Nagar Parishad Himayatnagar,
Nanded, Maharashtra ... *Respondent*

In the matter of:

Ericsson India Private Limited ... Petitioner

V/s

Reliance Infratel Limited
... Corporate Debtor

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate

For the Respondent: None

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of keeping sealed the Towers of the Corporate Debtor situated at the site (i.e. situated at Himayatnagar) are illegal and bad in law and consequently set aside and direct the de-sealing of the sites/towers of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from taking any coercive steps of whatsoever nature with respect to any of the Towers of the Corporate Debtor during its CIRP;*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*
2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.
3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Gat No.301/2, Himayatnagar, Tal-Himayatnagar, Dist-Nanded at Himayatnagar (herein after called as the site), among other locations across the

Country.

4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Respondent sealed the site 3 years ago in 2017 and has continued to keep sealed the properties/sites at which certain assets of the Corporate Debtor are located during the CIRP period.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.
8. The Respondent issued Demand Notice on 05.02.2019 demanding payment of property tax of Rs.1,92,000/- pertaining to FY 2017-2019 in relation to the Site.
9. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the past dues in relation to the site sealed the said site as afore indicated.
10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the

site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.

11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)...”

12. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.
13. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated

03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.

14. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:

- (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.
- (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.
- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;

(iv) No direction can be given for payment of pre-CIRP dues.

Sd/-

V. NALLASENAPATHY

Member (Technical)

Sd/-

JANAB MOHAMMED AJMAL

Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1247 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance
Infratel Ltd. ... *Applicant*

V/s

Chief Officer,
Patdi Nagarpalika, Taluka - Dasada,
Patdi Municipality, Gujarat ... *Respondent*

In the matter of:

Ericsson India Private Limited ... Petitioner

V/s

Reliance Infratel Limited
... Corporate Debtor

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate

For the Respondent: None

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of sealing the Towers of the Corporate Debtor situated at the site (i.e. situated at Patdi, Kharagoda) is contrary to Section 14 of the Code and consequently set aside and direct the de-sealing of the towers with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from sealing, attaching and selling the Towers of the Corporate Debtor and consequently, quash the Sealing Notice; and*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*
2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.
3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Shri Patdi Meshree Mahajan, Property No.1017, City Survey

No.2130, Space of Math, Post Patdi, Taluka Patdi, District - Surendranagar, Pin Code – 382 765 (herein after called as the site), among other locations across the Country.

4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax and water tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax, water tax, housekeeping charges and education cess in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 05.03.2020, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the site.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.
8. In furtherance of tax bill issued earlier, the Respondent issued a final notice dated 07.02.2020 informing the Corporate Debtor that on account of non-payment of amounts towards property tax, water tax, housekeeping charges, etc. amounting to Rs.1,13,945/- for the past periods including the year 2019-20 in relation to the Site, the site was being sealed by the Nagarpalika.

9. Vide the Sealing Notice, the Respondent informed the Corporate Debtor that on account of non-payment of the dues owed to the Nagarpalika and in the event of continued non-payment, if the payment is not received by 25.02.2020, the Nagarpalika shall proceed to attach the Site, the water connection and other service supplies in relation to the Site shall be disconnected as per the provisions of the Gujarat Nagarpalika Act, 1963 and the movable property erected on the Site shall be attached and thereafter sold for the recovery of the said dues.
10. In response to the aforementioned Sealing Notice, the Corporate Debtor *vide* its letter dated 13.02.2020 informed the Respondent about the ongoing CIRP of the Corporate Debtor, the prevailing moratorium and the treatment applicable to the pending dues payable by the Corporate Debtor to the Respondent.
11. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the property tax in relation to the site sealed the said site as afore indicated.
12. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.
13. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement,

decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)..."

14. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.

15. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.

16. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the

Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:

- (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.
- (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.
- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;
- (iv) No direction can be given for payment of pre-CIRP dues.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

JANAB MOHAMMED AJMAL
Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1249 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance
Infratel Ltd. ... *Applicant*

V/s

Chief Officer,
Vita Nagarparishad,
Vita, Sangli, Maharashtra ... *Respondent*

In the matter of:

Ericsson India Private Limited ... Petitioner

V/s

Reliance Infratel Limited ... Corporate Debtor

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate

For the Respondent: Mr. Nikhil Wadkar with Mr. Nandu Pawar, Advocates

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of sealing the Towers of the Corporate Debtor situated at Vita, Sangli is contrary to Section 14 of the Code and consequently set aside and direct the de-sealing of the site of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from sealing, seizing and auctioning the Towers of the Corporate Debtor and consequently, quash the Demand Notices; and*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*
2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.
3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Gat No.816/4, A/P Vita, Taluka - Khanapur, District: Sangli

(Sangli Road Site) and at Property No.166/1, Behind Prasad Theatre, Near BSNL, Vita, Taluka Khanpura, District - Sangli, Maharashtra (*Vita Site*) (herein after collectively called as the sites), among other locations across the Country.

4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax and water tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax and water tax in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 28.02.2020 and 03.03.2020, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the sites and has continued to keep sealed the sites.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.
8. The Respondent issued Demand Notices on 03.06.2019 and 06.06.2019 respectively demanding payment of property tax of Rs.82,982/- pertaining to FY 2018-2020 in relation to the Sangli Road site and Rs.1,46,670/- pertaining to FY 2018-2020 in relation to the Vita Site.
9. The Respondent has not filed any claim for the unpaid dues before the Applicant.

He, however, on the ground of non-payment of the property tax and water tax in relation to the site sealed the said site as afore indicated.

10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.

11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)...”

12. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and

custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.

13. The Respondent filed a Reply objecting to the Application and submitted as follows:

- (a) The Application is not maintainable since the Respondent has not taken any action against the Corporate Debtor. The actions challenged in the present application have been taken against two different companies, namely “Reliance Infocomm Ltd.” and “Reliance Infotech Ltd.” who are the lessees of the premises. The Respondent has never raised any demand for payment of property tax against the Corporate Debtor;
- (b) The Corporate Debtor has no right or interest in the towers of the premises. The property taxes were demanded from and were paid by Reliance Infocom Ltd. and Reliance Infotech Ltd. The demand notice for property tax was issued only against Reliance Infocom Ltd. and Reliance Infotech Ltd.
- (c) Without prejudice to the above contention, it is submitted that the cut off date is 15.05.2018 and the bills were raised for the period from 01.04.2018 to 31.03.2020 and therefore only the period of 45 days falls prior to the cut off date, i.e., commencement of CIRP date;
- (d) Since the towers does not belong to the Corporate Debtor, there is no question of the business of the Corporate Debtor getting impacted. Hence, grant of access to the Applicant to the towers does not arise.
- (e) The moratorium under Section 14 of the Code is not applicable in respect of the demand notice and the actions taken in pursuance thereof against Reliance Infocom Ltd. and Reliance Infotech Ltd. The Respondent has every right to take actions against these two companies for recovering the taxes from them.

14. The counsel for the Applicant submits that the towers in the said premises were under the Corporate Debtor only and they are willing to make the payment of taxes

for the CIRP period.

15. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.
16. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:
 - (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.

- (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.
- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;
- (iv) No direction can be given for payment of pre-CIRP dues.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

JANAB MOHAMMED AJMAL
Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1253 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance
Infratel Ltd. ... *Applicant*
V/s

Chief Officer,
Tirora Nagar Parishad, District Bhandara
Maharashtra ... *Respondent*

In the matter of:

Ericsson India Private Limited ... Petitioner
V/s
Reliance Infratel Limited
... Corporate Debtor

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal
Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate
For the Respondent: None

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of sealing the Towers of the Corporate Debtor situated at the site (i.e., situated at Tirora) is contrary to Section 14 of the Code and consequently set aside and direct the de-sealing of the site of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from sealing, seizing and auctioning the Towers of the Corporate Debtor and consequently, quash the Demand Notice; and*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.

3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Plot No.5, Tumser Road, Gandhi Ward, Tirora (herein after called

as the site), among other locations across the Country.

4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax and water tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax and water tax in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 26.12.2019, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the site.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.
8. The Respondent issued Demand Notice on 19.12.2019 informing the Corporate Debtor of its unpaid tax dues amounting to Rs.1,33,599/- for the period till 31.03.2020 in relation to the Site.
9. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the property tax and water tax in relation to the site sealed the said site as afore indicated.

10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.

11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)...”

12. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.

13. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.
14. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:
- (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.
 - (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.

- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;
- (iv) No direction can be given for payment of pre-CIRP dues.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

JANAB MOHAMMED AJMAL
Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1285 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance Infratel Ltd. ... *Applicant*

versus

Commissioner,
Kolhapur Municipal Corporation
Shivaji Maharaj, Main Building
Kolhapur – 416 002 ... *Respondent*

In the matter of:

Ericsson India Private Limited ... Petitioner
Vs.
Reliance Infratel Limited ... Corporate Debtor

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal
Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate
For the Respondent: Mr. Abhijit Adagule, Advocate

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:

a. To order and declare that the Respondent's act of keeping sealed the Towers of the Corporate Debtor situated at the site of Kolhapur are illegal and bad in law and consequently set aside and direct the de-sealing of the towers of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;

b. To order and restrain the Respondent by way of an injunction from taking any coercive steps of whatsoever nature with respect to any of the towers of the Corporate Debtor during its CIRP; and

c. To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.

2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.

3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Ambai Tank site and at Market Yard site, Kolhapur (herein after collectively called as the sites), among other locations across the Country.
4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 27.11.2018 and 18.03.2019, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the sites and has continued to keep sealed the sites.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.

8. The Respondent issued Demand Notices on 01.04.2019 demanding payment of property tax of Rs.11,08,134/- and Rs.15,86,047/- which pertained to the FY 2008-2020 for the Ambai Tank site and to the FY 2014-2020 for the Market Yard site, respectively.
9. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the property tax and water tax in relation to the site sealed the said site as afore indicated.
10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.
11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of

*Financial Assets and Enforcement of Security Interest Act, 2002
(54 of 2002)...”*

12. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.

13. The Respondent filed a Reply objecting to the Application and submitted as follows:
 - (a) The Application is false, frivolous, misconceived, vexatious and not maintainable. The Applicant has taken the property on lease from the owners on the basis of the Lease Agreement and had agreed to pay the applicable Municipal taxes. Upon its failure to pay the taxes as prescribed under the Maharashtra Municipal Corporation Act, 1949 the Respondent was authorized to seal the premises;
 - (b) The public announcement by the Applicant inviting claims was not issued within the Kolhapur Municipal Corporation limits. The Applicant also failed to serve the copy of the Public Announcement on the Respondent. The premises were sealed prior to the initiation of the CIRP.
 - (c) No communication was received from the Applicant much less the letter dated 16.05.2019, wherein it is alleged that the Applicant requested the Respondent not to take any coercive action. The contention of the Applicant that the attempts were made to pay the dues

of the Respondent is denied. The employees of the Corporate Debtor had orally approached the Respondent requesting to accept the payment from the Applicant for the CIRP period.

14. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.
15. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:
 - (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek

Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.

- (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.
- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;
- (iv) No direction can be given for payment of pre-CIRP dues.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

JANAB MOHAMMED AJMAL
Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1288 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance
Infratel Ltd. ... *Applicant*

V/s

Sarpanch,
Bilkha Gram Panchayat
Bilkha, Gujarat – 3621 10 ... *Respondent*

In the matter of:

Ericsson India Private Limited ... *Petitioner*

V/s

Reliance Infratel Limited
... *Corporate Debtor*

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate

For the Respondent: None

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of sealing the Towers of the Corporate Debtor situated at the site (i.e., situated at Bilkha, Junagadh) is contrary to Section 14 of the Code and consequently set aside and direct the de-sealing of the Towers of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from sealing and/or initiating any coercive action in respect of the Towers of the Corporate Debtor as present within its jurisdiction;*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*
2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.
3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Open Plot of Ajitbhai Vegad, Near Airtel Tower, Bilakha, Taluka - Visavadar, District – Junagadh (herein after called as the site), among other

locations across the Country.

4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax and mobile tower tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax and mobile tower tax including one-time connection charges and certain penalty charges in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 24.03.2020, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the site.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.
8. The Respondent issued Demand Notice on 11.03.2020 informing the Corporate Debtor of its unpaid property tax/mobile tower tax dues, including one-time connection charges and penalty, amounting to Rs.7,95,303/- for the period from FY 2006-07 till 2019-20 in relation to the Site.
9. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the property tax/mobile tower tax

dues, including one-time connection charges and penalty in relation to the site sealed the said site as afore indicated.

10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.

11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)...”

12. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and

custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.

13. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.
14. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:
 - (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.

- (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.
- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;
- (iv) No direction can be given for payment of pre-CIRP dues.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

JANAB MOHAMMED AJMAL
Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1289 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance
Infratel Ltd. ... *Applicant*

V/s

Chief Officer,
Saswad Nagar Parishad, Saswad,
Taluka – Purandhar, District – Pune
411 001, Maharashtra ... *Respondent*

In the matter of:

Ericsson India Private Limited ... *Petitioner*

V/s

Reliance Infratel Limited
... *Corporate Debtor*

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate

For the Respondent: None

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of sealing the Towers of the Corporate Debtor situated at the site (i.e., situated at Saswad, Pune) is contrary to Section 14 of the Code and consequently set aside and direct the de-sealing of the Site of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from sealing, seizing and auctioning the Towers of the Corporate Debtor and consequently, quash the Demand Notice;*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*
2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.
3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Sr. No.617/1b, CTS No.4350/1, Sushilanand Hsg. Soc. A/P

Saswad, Taluka - Purandhar, District – Pune (herein after called as the site), among other locations across the Country.

4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax and water tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax and water tax in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 06.03.2020, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the site.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.
8. The Respondent issued Demand Notice on 06.03.2020 informing the Corporate Debtor of its unpaid tax dues amounting to Rs.2,28,341/- for the period until 31.03.2020 in relation to the Site.
9. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the property tax/mobile tower tax dues, including one-time connection charges and penalty in relation to the site,

sealed the said site as afore indicated.

10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.

11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)...”

12. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and custody of the assets of the Corporate Debtor at the site. The object of the Code

would be frustrated thereby.

13. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.

14. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:
 - (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.

- (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.
- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;
- (iv) No direction can be given for payment of pre-CIRP dues.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

JANAB MOHAMMED AJMAL
Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1422 of 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance Infratel Ltd.

... *Applicant*

versus

Chief Officer,
Chaklasi Nagarpalika, Taluka Nadia,
Kheda, Chaklasi,
Gujarat – 387 315.

... *Respondent*

In the matter of:

Ericsson India Private Limited ... Petitioner

Vs.

Reliance Infratel Limited ... Corporate Debtor

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant : Mr. Ameya Gokhale, Advocate

For the Respondent : None

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of sealing the Towers of the Corporate Debtor situated at Chaklasi, Nadiad is contrary to Section 14 of the Code and consequently set aside and direct the de-sealing of the towers erected at the Site of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from sealing the Towers and disconnecting the networks/cable connections in relation to the towers of the Corporate Debtor and consequently, quash the first final notice/second final notices, to the extent such notices contemplate such actions being taken by the Respondents;*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the

stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.

3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Suryakantbhai Patel, Javerdas Ni Khadki, Chaklasi, District: Kheda (herein after called as the site), among other locations across the Country.
4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax and cable rent charges, including one-time registration fees, re-installation charges and tower charges in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax and water tax etc. in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 13.03.2020, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the site.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the

initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.

8. The Respondent issued Demand Notices on 27.09.2016 and 04.02.2020 informing the Corporate Debtor of its unpaid property tax, cable rent charge dues amounting to Rs. 9,87,000/- for the period 2019-2020 in relation to the Site. On receipt of the Demand Notice, the Corporate Debtor approached the Respondent for negotiating the total outstanding dues payable. Thereafter, the Respondent issue the revised Demand Notice on 15.02.2020 reducing the amount due to Rs. 8,93,800/-.
9. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the property tax and cable rent charges in relation to the site sealed the said site as afore indicated.
10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code
11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall

by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)...”

12. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.

13. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after

disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.

14. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:

- (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.
- (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.
- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;

(iv) No direction can be given for payment of pre-CIRP dues.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
JANAB MOHAMMED AJMAL
Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1423 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance Infratel Ltd. ... *Applicant*

versus

Tahsildar,
Tahsildar Parola, Revenue Department
Tamaswadi, Taluka Parola
District – Jalgaon 425 111 ... *Respondent*

In the matter of:

Ericsson India Private Limited ... Petitioner
Vs.
Reliance Infratel Limited ... Corporate Debtor

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal
Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate
For the Respondent: None

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of sealing the Towers of the Corporate Debtor situated at Tamaswadi, Parola is contrary to Section 14 of the Code and consequently set aside and direct the de-sealing of the towers of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from distraining and selling the towers of the Corporate Debtor and consequently, quash the demand notice, to the extent it contemplates such recovery actions;*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the

Corporate Debtor.

3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Gat No.1497/2, Plot No.33, A/P Tamaswadi, Taluka – Parola, District – Jalgaon 425 111 (herein after called as the site), among other locations across the Country.
4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 05.03.2020, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the site.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.

8. The Respondent issued Demand Notice on 18.02.2020 informing the Corporate Debtor of its unpaid property tax and applicable penalty amounting to Rs.1,15,380/- for the period 2017-18, 2018-19 and 2019-20 in relation to the Site.
9. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the property tax in relation to the site sealed the said site as afore indicated.
10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.
11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of

*Financial Assets and Enforcement of Security Interest Act, 2002
(54 of 2002)...*

12. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.
13. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.
14. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble

Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:

- (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.
- (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.
- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;
- (iv) No direction can be given for payment of pre-CIRP dues.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

JANAB MOHAMMED AJMAL
Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1425 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance Infratel Ltd. ... *Applicant*

versus

Chief Officer,
Jaysingpur Nagar Parishad
District – Kolhapur 416 101 ... *Respondent*

In the matter of:

Ericsson India Private Limited ... Petitioner
Vs.
Reliance Infratel Limited ... Corporate Debtor

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal
Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate
For the Respondent: None

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of sealing the Towers of the Corporate Debtor situated at Jaysingpur, Kolhapur is contrary to Section 14 of the Code and consequently set aside and direct the de-sealing of the towers of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from sealing, seizing and auctioning the towers of the Corporate Debtor and consequently, quash the demand notice; and*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.

3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Shamrao Salunkhe, Plot 42, Datt Co-operative Society, Anandghan, Jaisingpur (herein after called as the site), among other locations across the Country.
4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax and water tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax and water tax in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 10.01.2020, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the site.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.
8. The Respondent issued Demand Notice on 13.06.2019 informing the

Corporate Debtor of its unpaid tax amounting to Rs.1,42,063/- for the period until 31.03.2020 in relation to the Site.

9. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the property tax in relation to the site sealed the said site as afore indicated.
10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.
11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) ...”

12. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.

13. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.

14. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC

OnLine SC 1478). We therefore, allow the Application and order as follows:

- (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.
- (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.
- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;
- (iv) No direction can be given for payment of pre-CIRP dues.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

JANAB MOHAMMED AJMAL
Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1426 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance Infratel Ltd. ... *Applicant*

versus

Commissioner,
Malegaon Municipal Corporation,
District Nasik, Gulshanabad
Malegaon – 423 203 ... *Respondent*

In the matter of:

Ericsson India Private Limited ... Petitioner
Vs.
Reliance Infratel Limited ... Corporate Debtor

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal
Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate
For the Respondent: None

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of sealing the Towers of the Corporate Debtor situated at Soyagaon, Dhule is contrary to Section 14 of the Code and consequently set aside and direct the de-sealing of the towers of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from sealing, seizing and auctioning the towers of the Corporate Debtor and consequently, quash the pre-seizure intimation; and*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.

3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Parvat Heights, Satana Naka, Soyagaon, Malegaon (herein after called as the site), among other locations across the Country.
4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax and water tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax and water tax in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 30.03.2020, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the site.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.
8. The Respondent issued a Notice on 31.03.2019 informing the Corporate Debtor that on account of non-payment of the dues payable in terms of the

demand notices issued earlier by the Corporation and in the event of continued non-payment, the water connection in relation to the site shall be disconnected and the movable property on the site shall be seized and thereafter auctioned.

9. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the property tax and water tax in relation to the site sealed the said site as afore indicated.
10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.
11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of

*Financial Assets and Enforcement of Security Interest Act, 2002
(54 of 2002)...*

12. The Applicant relies on Section 18 and Section 25 of the Code which mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.
13. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.
14. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble

Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:

- (i) The Respondent is directed to remove the seal within seven days of receipt of this order. Failing which the Applicant or the Successful Resolution Applicant, i.e., Reliance Projects & Property Management Services Limited, as the case may be, is permitted to remove the seal and can take over the premises. He/they may seek Police assistance in case of apprehension of breach of peace at the site. The local Police authorities shall extend all cooperation in implementation of the order.
- (ii) The Respondent shall, within two weeks hereof, intimate the Applicant/Successful Resolution Applicant the amount of tax/charges due from 18.05.2018 till 03.12.2020.
- (iii) The Applicant/Successful Resolution Applicant shall pay the tax/charges due as referred in (ii) above within 15 days of receipt of such intimation;
- (iv) No direction can be given for payment of pre-CIRP dues.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

JANAB MOHAMMED AJMAL
Member (Judicial)

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. I

IA No. 1427 OF 2020
in
C.P. No. (IB) 1385/(MB)/2017

(An Application under Section 60(5) of the IBC, 2016)

Anish Niranjan Nanavaty,
Resolution Professional of Reliance Infratel Ltd. ... *Applicant*

versus

Commissioner,
Chandrapur City Municipal Corporation,
Gandhi Chowk Road,
Chandrapur – 442 403 ... *Respondent*

In the matter of:

Ericsson India Private Limited ... Petitioner
Vs.
Reliance Infratel Limited ... Corporate Debtor

Order Dated: 22.03.2021

CORAM:

Hon'ble Member (Judicial), Janab Mohammed Ajmal
Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ameya Gokhale, Advocate
For the Respondent: None

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

1. The Applicant seeks intervention of this Authority with the following prayers:
 - a. *To order and declare that the Respondent's act of keeping sealed the Towers of the Corporate Debtor situated at Chandrapur are illegal and bad in law and consequently set aside and direct the de-sealing of the sites/towers of the Corporate Debtor with immediate effect and allow access to the personnel of the Applicant to said Towers;*
 - b. *To order and restrain the Respondent by way of an injunction from taking any coercive steps of whatsoever nature with respect to any of the Towers of the Corporate Debtor during its CIRP; and*
 - c. *To pass such other order/orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The Corporate Debtor, namely, Reliance Infratel Ltd. was put under the Corporate Insolvency Resolution Process (CIRP) on a Petition filed by one of its Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by an order dated 15.05.2018 of this Tribunal. On 18.05.2018 this Bench appointed Mr. Manish Dhirajlal Kaneria as the Interim Resolution Professional (IRP) of the Corporate Debtor. On an Appeal filed against the order, the Hon'ble NCLAT by an order dated 30.05.2018 stayed the CIRP against the Corporate Debtor. Subsequently the Hon'ble NCLAT *vide* order dated 30.04.2019 vacated the stay order with a direction to proceed with the matter in accordance with law. This Bench by an order dated 21.06.2019 replaced the IRP and appointed the Applicant as the Resolution Professional (RP) of the Corporate Debtor.

3. The Corporate Debtor, an infrastructure Company, was *inter alia*, involved in development of infrastructure. It included erection of towers for mobile telephony. It had towers at Bhausar Chowkh, Chandrapur (herein after called as the site), among other locations across the Country.
4. The Corporate Debtor was paying the statutory taxes and fees on such sites by virtue of being the lessee/occupier of the properties/premises. The Respondent had levied property tax in relation to the site. Apparently, certain dues payable to the Respondent prior to the commencement of the CIRP towards property tax in relation to the towers erected at the site of the Corporate Debtor were pending.
5. The Applicant submits that the Respondent, on 05.04.2018, in complete disregard to the provisions of the Code prohibiting any adverse action against the Corporate Debtor, sealed the site.
6. The Application is thus filed with a view to protect and preserve the value of the assets of the Corporate Debtor, to ensure that the Corporate Debtor remains a going concern during the CIRP period.
7. The Respondent, by letter dated 16.05.2019, was informed about the initiation of the CIRP of the Corporate Debtor with a request not to take any coercive action against the Corporate Debtor, in view of Section 14 of the Code, which could adversely affect the business operations of the Corporate Debtor.
8. The Respondent issued Demand Notice on 30.04.2019 demanding payment of property tax of Rs.6,21,385/- which pertained to FY 2015-2020 in relation

to the Site.

9. The Respondent has not filed any claim for the unpaid dues before the Applicant. He, however, on the ground of non-payment of the property tax and water tax in relation to the site sealed the said site as afore indicated.
10. The Applicant is not being permitted to enter the premises and is thus unable to maintain/protect the towers/assets of the Corporate Debtor at the site on account of the defiant actions of the Respondent. The act of the Respondent in sealing the site and contemplating attachment/sale of the towers for recovery of its past dues, when a moratorium is in vogue during the ongoing CIRP period, is clearly in breach of provisions of Section 14 of the Code.
11. The relevant provisions of Section 14(1) of the Code read as under:

“14. Moratorium.-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)...”

12. The Applicant relies on Section 18 and Section 25 of the Code which

mandates that the RP has to (i) ensure that the Corporate Debtor functions as a going concern during the CIRP period, and (ii) take control and custody of the assets of the Corporate Debtor. Hence, if the sealing of the site is not set-aside/vacated and the Respondent is not enjoined from attaching/selling the towers/assets of the Corporate Debtor for the recovery of its past dues, the Applicant will not be able (i) to maintain the Corporate Debtor as a going concern; and (ii) take control and custody of the assets of the Corporate Debtor at the site. The object of the Code would be frustrated thereby.

13. It is submitted by the Applicant that despite repeated attempts by him, the Respondent failed to appreciate that his actions are preventing the Applicant from performing the statutory duties under the Code. This Bench by order dated 03.12.2020 approved the Resolution Plan in respect of the Corporate Debtor submitted by Reliance Projects & Property Management Services Limited (formerly known as Reliance Digital Platform & Project Services Limited). It passed a direction that the creditors can be paid only after disposal of IA Nos. 1960 of 2019 & 3055 of 2019 by this Bench. The said IAs have since been disposed of.
14. We have heard the learned counsel for the Applicant. There has been no representation from the side of the Respondent. We are of the considered view that the municipal tax/statutory dues during the period of CIRP should be paid to the Respondent, as CIRP costs. No direction for payment of pre-CIRP dues, for which no formal claim had been made by the Respondent with the RP, can be given in view of the fact that no fresh liability can be imposed on the Successful Resolution Applicant as held by the Hon'ble Apex Court in the case of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.*: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478). We therefore, allow the Application and order as follows:

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V. NALLASENAPATHY
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