

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

**I.A. 1424 OF 2020**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

Shri Anish Niranjana Nanavaty  
Resolution Professional

**...Applicant**

Vs.

Central Board of Direct Taxes,  
Ministry of Finance & Others

**...Respondent**

In the matter of

C.P.(IB) No. 1385/MB/2017

Ericsson India Private Limited

**. Operational Creditor**

Vs.

Reliance Infratel Limited

**...Corporate Debtor**

***Order delivered on: 07/12/2023***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

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

***Appearances:***

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For the Applicant /RP : Mr. Rishabh Jaisani, Advocate

For the Applicant :

**ORDER**

***Per: V.G. Bisht, Member (Judicial)***

1. This IA 1424/2020 is filed by Sh. Anish Niranjana Nanavaty, Resolution Professional ("Applicant") on behalf of the Monitoring Committee of Reliance Infratel Limited ("RITL"/ "Corporate Debtor") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("the Code"), seeking necessary directions to the Respondents from this Adjudicating Authority. The Respondents are Central Board of Direct Taxes, Ministry of Finance, New Delhi (Respondent No. 1), Principal Commissioner of Income Tax-7, Aayakar Bhawan, New Marine Lines, Mumbai (Respondent No. 2), Director of Income Tax (Centralized Processing Centre), Bengaluru (Respondent No. 3), and Deputy Commissioner of Income Tax – Circle 8(1)(1) Aayakar Bhawan, New Marine Lines, Mumbai (Respondent No. 4). The Applicant seeks following reliefs –

1.1. Quash and set-aside the Impugned Order dated March 3, 2020 passed by the Respondent No. 2;

1.2. Direct the Respondent No. 3 to reverse the adjustment of Rs.141,41,86,628 i.e. the Available Refunds against the Outstanding IT dues of the Corporate Debtor and to forthwith pay the entire Available Refunds of Rs. 141,41,86,628 due to the Corporate Debtor;

2. By way of an order dated May 15, 2018, this Adjudicating Authority directed commencement of the corporate insolvency resolution process ("CIRP") of the Corporate Debtor. The said order was stayed by the National Company Law Appellate Tribunal ("NCLAT"/"Appellate Authority") vide its order dated May 30, 2018. The aforesaid stay was vacated by the order dated April 30, 2019 whereby the Appellate Authority directed the interim resolution professional of the Corporate Debtor ("IRP") to proceed in accordance with the provisions of the Code, and consequently the CIRP of RITL stood revived. Upon revival of the CIRP, the IRP published a public announcement ("Public Announcement") dated May 7, 2019 ("Cut-Off Date"), inviting claims from the creditors of the Corporate Debtor as on the Cut-Off Date. Vide order dated June 21, 2019 (published on June 28, 2019), this Adjudicating Authority appointed the Applicant as the resolution professional RP. Consequently, the Applicant took over the management of the business & affairs of the Corporate Debtor.
3. Vide an order dated December 3, 2020 ("Plan Approval Order"), this Adjudicating Authority approved the resolution plan ("Resolution Plan") submitted I OF by Reliance Projects & Property Management Services Limited (earlier known as Reliance Digital Platform & Project Services Limited) ("Resolution Applicant") which was approved by the committee of creditors of the Corporate Debtor ("CoC") with 100% voting share. The Resolution Plan is presently pending implementation and the Corporate Debtor is currently under the supervision of the

Monitoring Committee (MC) constituted in terms of the Resolution Plan.

4. It is the case of the Applicant that in December, 2019, the Respondent No. 1 through its Officers namely Respondent No. 4 had issued demand notices to the Corporate Debtor, in terms of certain assessment orders passed in regard thereto under the provisions of the Income Tax Act, 1961 ("IT Act"). The unpaid dues amounted to Rs. 288,67,70,080 ("Outstanding IT Dues").

4.1. In relation to the Outstanding IT Dues, the Corporate Debtor filed appeals before the Hon'ble Commissioner of Income Tax (Appeals) - 14 which are presently pending ("Pending Appeals")

4.2. In terms of Section 237 of the IT Act, on account of excess tax paid by the Corporate Debtor over and above the dues chargeable to it under the IT Act, the Corporate Debtor is entitled to refund of excess amount paid. By way of intimations issued under Section 143(1) of the IT Act, upon processing of the Returns of Income, the Corporate Debtor was intimated the details of the Available Refunds due to the Corporate Debtor. An amount of Rs. 141,41,86,628 is eligible to be refunded to the Corporate Debtor. ("Available Refunds")

4.3. By intimations dated February 7, 2020 and February 25, 2020, issued in terms of Section 245 of the IT Act, the Corporate Debtor was informed by officers within the jurisdiction of

Respondent No.3 that the Available Refund amounts shall be adjusted against the Outstanding IT Dues. On account of the Pending Appeals and as per the mandate and provisions of the Code, the Corporate Debtor filed applications in terms of Section 220(6) of the IT Act requesting the Respondent No. 4 to stay the enforcement/ recovery of the Outstanding Dues u/s Section 220(6) of IT Act.

4.4. Subsequently, vide common order dated March 3, 2020 passed in the case of both the Section 245 Intimations, the Respondent No. 2, disposed off the Section 220(6) Applications/ letter filed by the Corporate Debtor, and rejected the plea of the Corporate Debtor for the officers of the Respondent No. 1 to refrain from adjusting the Available Refunds against the Outstanding IT Dues ("Impugned Order"). Pursuant to the Impugned Order, the officers under the jurisdiction of Respondent No. 3 adjusted the Available Refunds against the Outstanding IT Dues.

4.5. The Applicant has been in receipt of claims from the office of the Respondent in relation to the Outstanding IT Dues. However, on account of the Pending Appeals, the claims submitted had been verified as contingent. Any action to adjust the Available Refunds against the Outstanding IT Dues therefore amounts to a preferential payment in favour of the Respondent, which is impermissible in terms of the provisions of the Code.

- 4.6. Further, in terms of the decisions of this Tribunal, it is clear that not only the dues that are classified as a 'debt' (in terms of the Code) are restricted from being recovered directly from the Corporate Debtor during the subsistence of the moratorium; even indirect means of recovery, such as via garnishee notices, cannot be adopted by authorities to recover such dues from the Corporate Debtor.
- 4.7. Accordingly, it is submitted that the action undertaken by the Respondent in furtherance of the Impugned Order and the observations recorded in the Impugned Order for satisfaction of the Outstanding IT Dues by making an adjustment against the Available Refunds amounts to an action for recovery - expressly barred under Section 14(1) of the Code and is illegal and therefore, the Applicant has filed the present application.
5. The Respondents have not filed their reply. However, the issue involved in this Application is identical to issue involved in IA 1655 of 2022 involving same parties, but pertains to different assessment year, accordingly, this bench consider the same defence in this application also.
6. We have heard the Counsel and perused the material available on record.
- 6.1. We find that the Resolution Plan in the case of Corporate Debtor was approved by this Tribunal on 3.12.2020 and the Applicant apprehends the adjustment of the refund of taxes against the Demand for earlier years by Respondent No. 3. It

is undisputed fact that these demands pertain to the period prior to approval of resolution plan by this Tribunal i.e. prior to 03.12.2020, as the notice of intimation itself is dated February 7, 2020 and February 25, 2020.

6.2. We find that the adjustment of outstanding demands against the amounts determined refundable is expressly provided in section 245 of the Income Tax Act, 1961 and the Respondent No. 3 adjusts the outstanding demand after providing opportunity to the tax payer to disagree with the outstanding demands. In accordance with such rules, the rules followed by Respondent No. 3 requires Respondent No. 4 to confirm the outstanding demands. Since the demands for earlier years were outstanding, the Respondent No.4 certified the demand as correct and collectible. Consequent to that, the Respondent No. 3 has adjusted the refund due for against outstanding demands of Rs. Rs. 288,67,70,080 /- .

6.3. Section 238 of the Code overrides other laws, accordingly the power of set off available u/s 245 of the Income Tax Act, 1961 is circumscribed by the provisions of the Code. A Resolution Plan approved by this Tribunal u/s 31(1) of the Code and binds all the creditors by the terms of such approved Resolution Plan, and the claims of creditors till the date of commencement of CIRP extinguishes to the extent remaining unpaid in terms of approved Resolution Plan. This has been consistently held by the Hon'ble Apex Court in catena of decisions. Accordingly, the Income Tax Department can not enforce recovery of outstanding demands pertaining to earlier years against the income tax refund arising subsequently and cannot enforce the

recovery thereof during moratorium period. The Applicant has filed additional affidavit apprising that a sum of Rs.1,41,41,86,628/- has been adjusted against demands for assessment years 2017-18 out of the refunds.

6.4. The decision relied upon by the Respondent No. 4 is distinguishable as the right of set off is available in the Liquidation proceedings, whereas no right of set off is available to any creditor during the CIRP of a corporate debtor. Further, the claim of the Income Tax Department for the AY 2017-18 gets extinguished as on 3.12.2020 in terms of the Order passed by this Tribunal approving the Resolution Plan in the manner proposed in such Plan.

6.5. We clarify that the Respondents shall allow the credit of taxes in accordance with the provisions of income tax Act, 1961 and process the refunds accordingly. In case the refund has been determined as lesser value and/or adjusted against the outstanding tax demands in terms of Section 245 of the IT Act, the amount of refund so adjusted shall be refunded back along with interest thereon u/s 244A from the date of adjustment till the date of actual refund to the applicant. Further, if the tax credit has been allowed for a lesser amount, the applicant shall be informed of memo of differences so that the applicant can file appropriate application in terms 154 of the Income Tax Act, 1961 for seeking modification of the order determining the refund in accordance with the provisions of Income Tax Act explaining the differences which resulted in grant of lower tax credit.

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- 6.6. In view of foregoing, we direct the Respondents to refund the amount of Rs.1,41,41,86,628/- alongwith interest till the date of actual demand.
7. In view of the foregoing, IA 1424 of 2020 is disposed of as allowed.

SD/-

**Prabhat Kumar**  
Member (Technical)

SD/-

**Justice V.G. Bisht**  
Member (Judicial)