

Through Videoconference

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

*** *** ***

IA No. 1960/MB/2019
in
CP (IB) No. 1385/MB/2017

Doha Bank Q.P.S.C,
Sakhar Bhavan, Ground Floor, Plot No. 230,
Block No. III, Backbay Reclamation,
Nariman Point, Mumbai – 400 021.

... Applicant

versus

1. Manish Dhirajlal Kaneria,
Insolvency Resolution Professional of the Corporate Debtor,
21-23, T.V. Industrial Estate, 248-A, S.K. Ahire Marg,
Worli, Mumbai – 400 030.

2. State Bank of India,
Stressed Asset Management Branch – I,
The Arcade Second Floor
World Trade Center, Cuffe Parade,
Colaba Mumbai – 400 005.

3. Bank of India,
Mumbai Large Corporate Branch,
BOI Building 4th Floor,
70-80 MG Road Mumbai – 400 001.

4. UCO Bank,
Flagship Corporate Branch,
Mafatlal Centre, 1st Floor,
Nariman Point, Mumbai – 400 001.

5. Syndicate Bank,
SAMB, Maker Tower, “F” 2nd Floor,
Cuffe Parade, Mumbai – 400 005.

6. Oriental Bank of Commerce,
Large Corporate Branch, F-14,
Maker Towers, Cuffe Parade,
Mumbai – 400 005.

7. Indian Overseas Bank,
Nariman Point Branch,
229 Ground Floor, Bakhtawar Building,
Nariman Point, Mumbai – 400 021.

... Respondents

in

CP (IB) No. 1385/MB/2017

Ericsson India Pvt. Ltd.

...

Petitioner

V/s

Reliance Infratel Ltd.

...

Corporate Debtor

Order Dated: 02.03.2021

Coram:

Janab Mohammed Ajmal, Hon’ble Member (Judicial)

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

Appearance:

For the Applicant:

Mr. Prateek Seksaria, Advocate with Mr. Shuhabrata Chakraborti & Ms. Jinal Shah, Advocates i/b Juris Corp

For Respondent No. 1:

Mr. Ravi Kadam, Senior Advocate with Mr. Gaurav Joshi, Senior Advocate, Mr. Anoop Rawat, Ms. Meghna Rajadhyaksha, Mr. Rishabh Jaisani and Ms. Kirti Kalyani,

Advocates i/b Shardul Amarchand Mangaldas
& Co.

For Respondent No. 2: Mr. Kevic Setalvad, Senior Advocate with Mr.
Ryan Dsouza and Mr. Nirav Shah, Advocates
i/b DSK Legal.

For Respondent Nos. 3 to 7: M/s J. Sagar Associates, Advocates.

Per: Janab Mohammad Ajmal, Member Judicial

ORDER

This is an Application by one of the Financial Creditors of the Corporate Debtor (Reliance Infratel Limited) to declare certain Corporate Guarantees as fraudulent and preferential transactions and to set them aside and reconstitute/reorganise the Committee of Creditors (CoC) removing Respondent Nos. 2 to 7 and consequential directions thereupon.

2. The facts leading to the Application can be depicted as under. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 15.05.2018 (Admission Order) and Manish Dhirajlal Kaneria was appointed as Interim Resolution Professional (IRP) on 18.05.2018. The IRP published a public announcement on 21.05.2018 inviting claims from the creditors of the Corporate Debtor. Certain shareholders of the Corporate Debtor challenged the Admission Order before the Hon'ble National Company Law Appellate Tribunal (NCLAT) in CA (AT) (Insolvency) Nos. 255-256 & 257-258 & 259-260 of 2018. The Hon'ble NCLAT by an order dated 30.05.2018 *inter alia* stayed the Admission Order. However, in view of the subsequent developments, the Appellants withdrew the Appeal. The Hon'ble NCLAT by order dated 30.04.2019, permitted the withdrawal of the Appeal and directed this Tribunal to proceed with the matter in accordance with law.

3. Accordingly, the CIRP of the Corporate Debtor was resumed and by order dated 07.05.2019 this Tribunal directed the IRP to further proceed in the matter. The IRP issued a fresh public announcement on 07.05.2019 inviting claims from creditors. After receipt of claims the IRP constituted the CoC of the Corporate Debtor on 24.05.2019. The CoC thus constituted, had the Financial Creditors as members with their respective claims, provisionally admitted amounts and voting share as under:

(INR in Crore)

<i>Sr. No.</i>	<i>Name of Creditors</i>	<i>Amount Claimed</i>	<i>Amount Admitted (Provisional)</i>	<i>Amount under Verification</i>	<i>Voting share</i>
1.	State Bank of India	3628.68	3516.37	112.31	36%
2.	Bank of India	1064.82	979.17	85.65	10%
3.	UCO Bank	952.81	952.81	-	10%
4.	Standard Chartered Bank	753.14	753.14	-	8%
5.	Syndicate Bank	1225.18	611.03	614.15	6%
6.	Mahima Mercantile	514.34	514.34	-	5%
7.	VTB Capital	511.91	511.91		5%
8.	Doha Bank	408.81	408.81	-	4%
9.	Union Bank of India	1009.35	353.30	656.05	4%
10.	Emirates NBD	324.33	324.33	-	3%
11.	Industrial and Commercial Bank of China	1832.91	278.48	1554.43	3%

12.	<i>Oriental Bank of Commerce</i>	276.68	276.68	-	3%
13.	<i>Indian Overseas Bank</i>	184.70	184.70	-	2%
Total		12687.65	9,665.07	3,022.58	100%

4. The IRP by email dated 24/05/2019 sent notices to the Financial Creditors and members of the suspended Board of Directors to attend the first meeting of the CoC to be held on 30/05/2019 at 2.00 pm in Mumbai enclosing an agenda for discussion. The agenda '4' *inter alia* indicated that the IRP had received 26 claims from Financial Creditors till 21/05/2019. Of them 13 had been fully/partially verified who constituted the CoC. The other claims were still under verification and the claimants had been asked to furnish materials in support of their claims. The following were the summary of the claims received by the IRP from various Creditors.

(INR in Crore)

<i>Sr. No.</i>	<i>Creditors</i>	<i>Claim Amount by Creditor</i>	<i>Claim Amount Provisionally Admitted</i>
<i>1</i>	<i>Financial Creditors</i>	<i>12687.65</i>	<i>9655.07</i>
<i>1A</i>	<i>Financial Creditors (under Verification)</i>	<i>20925.96</i>	<i>Under Verification</i>
<i>2</i>	<i>Operational Creditors being suppliers, vendors and service providers</i>	<i>Approximately 1277Cr</i>	<i>Under Verification</i>
<i>3</i>	<i>Employees / Workmen</i>	<i>Approximately 3 Cr</i>	<i>Under Verification</i>
<i>4</i>	<i>Creditors (other than Financial and Operational)</i>	<i>Approximately 906 Cr</i>	<i>Under Verification</i>

5. The Applicant viz. Doha Bank Q.P.S.C. is a part of the Consortium of Banks/Financial Institutions which had extended a foreign currency loan of USD 250,000,000/- (United States Dollars Two Hundred and Fifty Million) to the Corporate Debtor under a loan agreement dated 19/03/2010. The Consortium by an amendment and restatement agreement dated 05/09/2016 extended the repayment date up to 03/12/2016. The Corporate Debtor could not repay the amount by that date. Hence, by another restatement agreement dated 04/12/2016 the repayment date was extended till 05/06/2017. As on date of the filing of the Application i.e., 29th May 2019 an amount of USD 199,000,000 including interest remained outstanding.

6. The Corporate Debtor is one of the subsidiaries of Reliance Communications Limited (RCOM), the holding/parent company. RCOM and another group entity viz. Reliance Telecom Limited (RTL) availed Rupee Loan Facilities respectively to the tune of Rs. 6015,00,00,000/- & Rs. 735,00,00,000/- under Facility Agreement dated 20/02/2015 from a Consortium of Banks of which the Respondent Nos. 2 to 7 too were the members. The Corporate Debtor on 03/03/2017 executed Deeds of Guarantee in favour of the Consortium Lenders securing the Rupee Loan Facilities granted to RCOM & RTL. The Axis Trustee Services Limited (Security Trustee) was appointed the Trustee in respect of the Deeds of Guarantee. In and around 2017 RCOM & RTL started to commit default in making timely repayments of the loan facilities. The Consortium eventually declared their accounts as Non-Performing Assets (NPA). On 01/02/2019 the Security Trustee under two separate letters by invoking the Corporate Guarantees called upon the Corporate Debtor to pay Rs. 7229,45,02,245.06/- in respect of the RCOM Facility & Rs. 810,32,47,830.65/- in respect of the RTL Facility. By email dated 08/02/2019 the Corporate Debtor informed the Applicant of the Letters/Notices dated 01/02/2019 by the

Security Trustee invoking the Corporate Guarantees. The Applicant under its letters dated 28/02/2019 & 08/03/2019 objected to the invocation of the Guarantees and intimated the Consortium Lenders through the Security Trustee that the Corporate Guarantees were created in breach of the terms of the Facility Agreement dated 19/03/2010 and subsequent amendments and restatements thereto. Despite requests made to that effect neither Respondent Nos. 2 to 7 nor the Corporate Debtor provided the copies of the said Guarantees to the Applicant. Respondent Nos. 2 to 7 by letter dated 18/03/2019 and the Corporate Debtor by its letter dated 19/03/2019 responded to the aforesaid letters dated 28/02/2019 & 08/03/2019 without providing any specifics. The Applicant by letter dated 26/03/2019 responded to the said communications.

7. It is the case of the Applicant that the so called Guarantees are *non est* in law. The Guarantees are also in violation of section 186 of the Companies Act, 2013. They are not binding on the Applicant (or the External Commercial Borrowings (ECB) Lenders) and are voidable at the instance of any one or all of them. The Guarantees were created in breach of the covenants and undertakings recorded under the facility agreement dated 19/03/2010. Execution of the so called Guarantees eclipsed the *bona fide* rights and interests of the direct lenders of the Corporate Debtor and rather created a preference in favour of lenders of its Parent Company/Group Entity. The Corporate Debtor was already in default in repayment of its loans to the Applicant and other ECB Lenders, on the date (03/03/2017) when the Guarantees were executed. Besides, the Corporate Debtor did not disclose the Guarantees in its financial statements nor did RCOM in its. The fact of further indebtedness through the Guarantees was never disclosed even when the negotiation for Strategic Debt Restructuring (SDR) was being undertaken by the Joint Lenders Forum (formed on 01/07/2017). The amount under the Guarantees exceeded the

Corporate Debtor's paid up capital and free reserves. The Corporate Guarantees were executed while the Corporate Debtor itself was reeling under severe financial stress.

8. The Applicant is unaware of the consideration which led to the creation of the Guarantees. The Corporate Debtor was aware of the fragile financial condition of RCOM & RTL and was well aware that they were not in a position to repay the Corporate Debtor upon invocation of the Guarantees. The reluctance and failure of the Corporate Debtor and Respondent Nos. 2 to 7 in making the Guarantees available to the Applicant and failure to show them in the financial statements smack of a conspiracy to defraud the ECB Lenders. The IRP overlooked these relevant facts and mechanically admitted Respondent Nos. 2 to 7 into the CoC. The Applicant in its reply dated 28/05/2019 to the Notice dated 24/05/2019 (for the first meeting of the CoC) expressed reservations and objected to the action of the IRP in that regard. It accordingly came up with the present application seeking the following reliefs:

- (a) *To declare the Purported Guarantees as transactions which are fraudulent and preferential transactions as defined under Section(s) 43 and 66 of the IB Code respectively and that the Purported Guarantees are non-est in law, not binding on the Applicant and voidable at the instance of the Applicant;*
- (b) *To direct the directors and the promoters of the Corporate Debtor to make such contributions to the assets of the Corporate Debtor as it may deem fit, including directions under Section 67 of the IB Code;*
- (c) *To de-recognize / declassify / delete the Respondent no. 2 to Respondent no. 7, who are claiming to be the financial creditors of the Corporate Debtor on the basis of the Purported Guarantees and claiming to form part of the committee of creditors of the Corporate Debtor;*

- (d) *to prepare a reconstituted committee of the creditors comprising of financial creditors of the Corporate Debtor as mandated under Section 21 of the IB Code, 2016;*
 - (e) *To perform his duties in accordance with the relevant provisions and regulation of the Insolvency and Bankruptcy Code, 2016;*
 - (f) *To defer any meeting of committee of creditors of the Corporate Debtor till the exercise as set out in terms of prayer(s) c) and d) above is accomplished;*
 - (g) *In the event, any meeting of committee of creditors of the Corporate Debtor is held, to keep the resolutions passed in the said meeting, in abeyance till the outcome of the present application;*
 - (h) *Pending final hearing and disposal of the application, ad-interim relief(s) in terms of prayer (e) and (f) above.*
 - (i) *for such other reliefs as this Hon'ble Court deems fit and proper in the facts and circumstances of the present case.*
9. The CoC in its first meeting held on 30.05.2019 decided to replace the IRP with Mr. Anish Niranjana Nanavaty as the Resolution Professional (RP). This Tribunal by order dated 21.06.2019 confirmed the appointment of Shri Nanavaty as the RP.
10. Respondent No. 2 (R2) strenuously objected to the Application and put in a reply. Respondent No. 1 (R1) did not file any reply. Upon his appointment as RP, Shri Nanavaty and his Counsel appeared for R1 and contested the application defending the actions of his predecessor in admitting Respondent Nos. 2 to 7 (R2 to R7) to the CoC as Financial Creditors of the Corporate Debtor. R3 to R7 filed separate replies adopting reply filed by R2.
11. It is the case of the R2 that the Corporate Guarantees could not be unenforceable and *non est* in law. The Corporate Debtor gave the Corporate

Guarantees for the consideration of securing the credit facilities availed by RCOM and RTL. The Applicant thus cannot question their validity.

12. The Applicant having not enclosed the facility agreement dated 19/03/2010 extended by the re-statement agreement dated 04/12/2016 could not claim that the Corporate Guarantees were in violation of the facility agreement. The few terms of the facility agreement could not be read in isolation. The whole of the document needs to be considered *vis-a-vis* the validity of the Corporate Guarantees. R2 and other Consortium Lenders in whose favour the Corporate Guarantees were executed, were not aware of the facility agreement by the ECB lenders. Thus the Applicant has no *locus standi* to challenge the Corporate Guarantees. The alleged breach of the facility agreement would not fetter the rights of the R2 to R7 and others in whose favour the Corporate Guarantees were executed.
13. The grievance of the Applicant could not affect the admission of R2 to R7 into the CoC. Even otherwise the present Application is not maintainable under Section 43 and 66 of the Code, the Application having not been brought by the RP. The facility agreement is governed by the English laws and hence could not be enforced on the Indian soil. The Corporate Debtor executed the Guarantees of its free will. The Consortium of lenders, in their commercial wisdom, accepted the Guarantees. The Applicant thus cannot question the said decision and the rights ensuing there from. It is further submitted that the Advocates of the Corporate Debtor in their letter dated 19/03/2019 have clearly stated that the Annual reports and financials of RCOM include the disclosure of the existence of the Corporate Guarantees.
14. The plea that the Guarantees were in violation of Section 186 of the Act is misconceived and is inapplicable. The Applicant and other lenders were aware

about the issuance of the Corporate Guarantees, the same having been discussed in the meeting of Joint Lenders Forum (JLF). The execution of the Corporate Guarantees could not be construed as fraudulent. The claims of the Respondents have been duly admitted by the IRP under the Code and the same accordingly cannot be questioned by the Applicant at this stage. It would be appropriate to indicate that one of the ECB lenders namely Emirates NBD Bank has filed claim with its related party RCOM under the Corporate Guarantee / co-obligor structure guaranteeing direct lending to the Corporate Debtor. This reflects the duality of the stand taken by the Applicant. The application is not otherwise maintainable and liable to be rejected with costs.

15. We have heard the Ld. Counsel appearing from both the sides at length. In our considered opinion the rival contention of the parties give rise to the following issues:

- I. Whether, the Application is maintainable?
- II. Whether, the admission of R2 to R7 into the CoC of the Corporate Debtor basing on the Corporate Guarantees dated 03/03/2017 reportedly executed by the Corporate Debtor in their favour is proper?;
- III. Whether, the Corporate Guarantees dated 03/03/2017 executed by the Corporate Debtor in favour of R2 to R7 and other members of the Consortium are preferential transactions?

Issue Nos. II & III

16. These issues being interlinked are taken up together for proper appreciation and convenience. The Petition under Section 9 of the Code was initiated by one of the Operational Creditors of the Corporate Debtor. As already indicated the Petition was admitted on 15/05/2018. Section 13 of the Code requires that upon the admission of the Application *inter alia* under Section 9, the Adjudicating

Authority shall cause a public announcement of the initiation of CIRP published calling for submission of claims under Section 15 of the Code. Regulations 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provides that Insolvency Professional within 3 days of his appointment shall make a public announcement, in Form A, appended to the Schedule. Form A *inter alia* calls upon the creditors of the Corporate Debtor to submit their claims with proof within 14 days from the appointment of the Interim Resolution Professional at the address mentioned against the entry No. 10. The Form also provides the means by which the creditor can submit their claims. The recitals of the Form mandate that the Financial Creditors shall submit their claims with proof only by electronic means to the IRP at the address mentioned against item 8 (amended item 10).

17. In the instant case the R1 made the public announcement on 21/05/2018. However, before the last date of the submission of the claims, the Hon'ble National Company Law Appellate Tribunal (NCLAT) in CA (AT) Insolvency No. 255 – 260 of 2018 stayed the order dated 15/05/2018. The stay continued till 30/04/2019 when the Hon'ble Appellate Authority permitted the withdrawal of the Appeals. Upon the receipt of the order this Tribunal by order dated 07/05/2019 directed the R1 to proceed with the matter in accordance with the law. R1 thereupon issued fresh public announcement on 07/05/2019 and constituted the CoC on 24/05/2019 after the receipt of the claims.
18. There is no material on record to indicate that R2 to R7 as Financial Creditors submitted their claims along with the proof to the IRP (R1) electronically on or before 21/05/2019. There is also no material on record to indicate which claims, as proof, the R1 perused to form an opinion that R2 to R7 would come within the parameters of Financial Creditors of the Corporate Debtor. There is

also no material on record to find that the R2 to R7 submitted the Corporate Guarantees dated 03/03/2017 as proof of their financial debt which the Corporate Debtor owed to them on the basis of the said Corporate Guarantees. There is also no material on record to indicate the place where the Corporate Guarantees were executed. During the hearing of the Application, learned Senior Counsel appearing for the R1 (RP) submitted that the RP and his team have perused the Corporate Guarantees in New Delhi and basing on the same RP was satisfied that R2 to R7 were the Financial Creditors of the Corporate Debtor. Perusal of the Guarantees in New Delhi cannot be regarded as compliance of Form A & Form C. The statutory Forms require that the Creditor must submit its claim with proof, this itself indicates that the proof so submitted would form part of the RP's records for collation of the claims and for verification of the Adjudicating Authority if the need so arose. As far as the claims of R2 to R7 are concerned such proofs never saw the light of the day nor was it submitted as required under the statute. It is trite that when a statute envisages a particular procedure for an act to be done, the act must necessarily be done in the manner so provided. In this connection the following is instructive. The Hon'ble Apex Court in the case of *Shiv Kumar Chadha Etc. v. Municipal Corporation of Delhi: 1993 SCR (3) 522 (= 1993 SCC (3) 161)* observed as regards the well-known principle in the following words.

"... if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of Taylor v. Taylor. (1875) 1 Ch. D. 426, Nazir Ahmed v. Emperor, AIR 1936 PC 253. This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of Ramachandra Keshav Adke v. Govind Joti Chavare, AIR 1975 SC 915."

Therefore, a statutory mandate requires strict compliance. In the instant case such compliance is squarely lacking.

19. The Code is a self-contained legislation (*Per Innoventive Industries Limited V/s. ICICI Bank: (2018) 1 SCC 407*) which provides specific procedure for collation of claims. Neither the RP nor any authority under the Code could afford to deviate from the procedure prescribed there under. R1 has not been able to show that the claims of the R2 to R7 were submitted to him electronically as provided under Form A. R2 to R7 have also not been able to show that they furnished their claims as provided under Regulation 8 of the CIRP Regulations in Form C of the Schedule.

20. Item 5 of the Form C mandates the Financial Creditor(s) to furnish the details of the documents by reference to which the debt can be substantiated. It was contended by the Applicant that the so called Corporate Guarantees attracted stamp duty in the State of Maharashtra. But in the absence of the documents itself either in the electronic form or physical form, it would not be appropriate for this Authority to comment whether the documents could attract stamp duty under the Maharashtra Stamp Act, 1958 (Bombay Act No. LX of 1957). Therefore, the decisions in that regard viz. - *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.: (2019) SCC Online SC 515*; *Avinash Kumar Chauhan v. Vijay Krishna Mishra: (2009) 2 SCC 532*, *New Central Jute Mills Co. Ltd. & Others v. State of West Bengal & Others: (1964) 1 SCR 535*; & *Indian Hume Pipe Co. Ltd. v. State of Maharashtra: (2018) SCC Online Bom 452*, relied on by the Applicant need not be discussed in detail.

21. From the aforesaid discussions the irresistible conclusion would be that R1 without proper submission of documents before him and without proper verification admitted R2 to R7 as Financial Creditors of the Corporate Debtor. Issue No. II is answered in the negative.

22. During the course of hearing the learned Counsel for the Applicant submitted that the prayers as to the preferential transactions are not pressed. It would however be profitable to discuss the matter as well. Section 43 of the Code provides as below:

“43. Preferential transactions and relevant time. -

1. *Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.*
2. *A corporate debtor shall be deemed to have given a preference, if—*
 - a. *there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and*
 - b. *the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.*
3. *For the purposes of sub-section (2), a preference shall not include the following transfers—*
 - a. *transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;*
 - b. *any transfer creating a security interest in property acquired by the corporate debtor to the extent that—*
 - i. *such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and*

ii. such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation. - For the purpose of sub-section (3) of this section, “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

- 4. A preference shall be deemed to be given at a relevant time, if—*
- a. it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or*
 - b. a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.”*

23. In order to come under the preferential transactions, the transaction must satisfy the requirements of Section 43(2) of the Code. The execution of the so called Corporate Guarantees dated 03/03/2017 could not be a transfer of property or an interest of the Corporate Debtor for the benefit of one of its Creditors or a body of Creditors. Admittedly on the date of execution of the documents i.e., on 03/03/2017, the R2 to R7 were not Creditors of the Corporate Debtor. Therefore, the execution of the Corporate Guarantees cannot be said to be for the benefit of the Creditors. Therefore, in our considered opinion the transaction covered under the Corporate Guarantees would not come within the

parameters of the preferential transaction provided under Section 43 of the Code. Issue No. III is answered in the negative.

Issue No. I:

24. The admission of the R2 to R7 as Financial Creditors adversely affected the position of the Applicant in the CoC of the Corporate Debtor. The Applicant was thus entitled to agitate the matter before the Adjudicating Authority seeking appropriate redressal. In view of the findings in Issue No. II, we are satisfied that the Application at the instance of the Applicant is maintainable. Issue No. I is answered in the affirmative.
25. In view of the discussions supra the Application deserves to be allowed in part. Prayer (b) cannot be granted since no case of fraud is made out under Section 66 of the Code. Hence ordered.

ORDER

The Application be and the same is allowed on contest in part. R2 to R7 are not recognised as Financial Creditors of the Corporate Debtor. R1 (RP) is directed to re-constitute the CoC. The consequence thereof shall be dealt with in accordance with the provisions of the Code. Prayers (a) and (b) are refused. No relief under prayers (f) to (h) can be granted. It is made clear that the decisions already taken by the CoC with R2 to R7 as members thereof shall not be called in question, consequent upon the present order. No costs.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)