

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

**I.A. 1943 OF 2020**

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

**Mr. Anish Niranjan Nanavaty**

Resolution Professional

...Applicant

Vs.

Industrial and Commercial Bank of China  
Limited

...Respondent

In the matter of

C.P.(IB) No. 3025/MB/2019

State Bank of India

**Financial Creditor**

Vs.

Reliance Communications Infrastructure  
Limited

**Corporate Debtor**

*Order delivered on: 02.01.2024*

*Coram:*

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

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

*Appearances*

For the Applicant : Mr. Gaurav Joshi, Ld. Sr. Advocate a/w  
Ms. Divya Jain, Advocate  
For the Respondent : Mr. Rohit Gupta, Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. The Application IA 1943/2020 has been filed by Sh. Ashish Niranjan Nanavaty, the Resolution Professional (“Applicant”) of M/s Reliance Communications Infrastructure Limited (“Corporate Debtor”) in the Corporate Insolvency Resolution Process (“CIRP”) under the Insolvency & Bankruptcy Code, 2016 (“Code”), inter alia, seeking direction to the M/s Industrial and Commercial Bank of China Limited (“Respondent”) to lift/ release/ remove the lien marked on the fixed deposit of the Corporate Debtor maintained with the Respondent bank. The Applicant has made following prayers –

- a. Order and direct the Respondent to lift/ release/ remove the lien marked on the fixed deposit no. 01660001000000994430000 of the Corporate Debtor and release the funds along with interest accruing thereon up to the date of remittance to the account number 30457824742, maintained with State Bank of India, Koper Khairane, Navi

Mumbai - Maharashtra [IFSC-SBIN0010331], belonging to the Corporate Debtor;

- b. Order and direct the Respondent to act in terms of the instructions of the Resolution Professional with respect to the accounts maintained. by the Corporate Debtor with the Respondent.

2. The Corporate Debtor is undergoing CIRP and the Resolution Plan in the case of Corporate Debtor has been approved by this Tribunal on 19.12.2023 Prior to the CIRP, the Corporate Debtor had opened a term/fixed deposit with the Respondent for Rs.27,60,00,000 ("FDR"). The Corporate Debtor had issued a letter dated 27 March, 2017 authorising the Respondent to mark a lien on the FDR in favour of the Respondent. including renewal of the FDR as a security in consideration of the Respondent having granted/agreed to grant extension of availability period for a facility to the Corporate Debtor ("Lien Letter"). In pursuance of the aforementioned Corporate Debtor's letter dated 27th March, 2017, the Respondent had marked a lien on the FDR.

2.1. On 10<sup>th</sup> July, 2020, the Applicant stated to the Respondent that as per the records of the Corporate Debtor, the Corporate Debtor had not availed of any credit facilities from the Respondent. Further, based on the documents available with the Corporate Debtor, there were no payment obligations of the Corporate Debtor to the Respondent or any other document which creates an obligation on the Corporate Debtor to create any security over the amounts lying in fixed deposit with the Respondent. Accordingly, the Applicant requested the

Respondent to release all the funds lying in Fixed Deposit Account No. 016600010000009944300001 to the Corporate Debtor's account within 5 days.

- 2.2. Despite several request and instructions from the Applicant referred in the Application, the Respondent has failed to refund the entire amounts accrued under the FDR to the account of the Corporate Debtor. Respondent has refused to remove the lien on the basis of facilities extended to other entity, namely Reliance Infratel Limited. It is the case of the Applicant that this contention is misconceived and based on an incorrect interpretation of Lien Letter, The Respondent's act of withholding the lien on the FDR is totally illegal and contrary to the provisions of the Code and instruction given to them by the Resolution Professional / Applicant.
- 2.3. The Applicant is stated to have clarified vide email dated 3<sup>rd</sup> September, 2020 that Respondent have acted in contravention of section 17(1)(d) of the Code, mandating all the financial institutions maintaining accounts of the Corporate Debtor to act on the instructions of the RP in relation to such accounts.
- 2.4. It is submitted that the right to Respondent to continue to hold lien on FDR was limited to a situation where the Respondent would have had provided a credit facility to the Corporate Debtor (on single or joint basis), which is not the case. Further advance to RITL by the Respondent, being in nature of external commercial borrowings required approval of the authorised dealer bank for creation of security in respect thereof under the extant guidelines of the RBI and in the absence of any such approval, no valid creation of security can be said to have taken place.

- 2.5. In any event, the Respondent could not have rejected the remittance of the monies of the Corporate Debtor lying with them basis Section 171 of the Indian Contract Act as in terms of section 17(1)(d) of the Code, it was required to comply with instructions of the resolution professional.
3. The Respondent has filed the Reply stating that the Corporate Debtor has authorised the Respondent to hold all the securities belonging to the Corporate Debtor and the proceeds thereof receptively not only for the specific advance made thereon but *also as security for any other moneys due* or which may at any time be due from the Corporate Debtor to the Respondent, whether singly or jointly with another or others in connection with the credit facilities provided to the Corporate Debtor by the Respondent.
- 3.1. Further in terms of said lien, during the period of security, the Respondent shall have right to transfer the units to itself/its nominees/assigns/successor or sell or redeem the units, irrespective of any contrary instructions given by the Corporate Debtor and any such transfer, sale or redemption of the units shall be valid in the same manner as if such units were transferred or sold or redeemed by the Corporate Debtor and the Corporate Debtor authorised the Respondent for the same.
- 3.2. The said lien letter further states that the authority given in the favour of the Respondent shall not be revoked by the Corporate Debtor except with the prior approval of the Respondent in writing to that effect.
- 3.3. Pursuant to the said Letter of lien and set-off, the Respondent marked a lien on the FDR and continued to mark a lien on the FCR without having taken consent from the IRP/RP. In this context, it may be noted that as per the said Letter of lien and

set-off the Respondent was not required (or under no obligation) to take consent from the Corporate Debtor for marking a lien on the FDR, since the said Letter of lien and set-off authorises the Respondent to mark a lien against the FDR and every renewal of such FD thereof upon maturity, in favour of the Respondent, till the same is vacated by the Respondent.

3.4. In response to communication dated 10<sup>th</sup> July, 2020, the Respondent is stated to have informed the Applicant that it had further extended certain foreign currency facilities to the Reliance Infratel Limited (“RITL”). Based on the said Letter of lien and set-off there was no bar towards exercising the lien, inter alia in relation to the credit facilities extended to RITL. It is claimed by the Respondent that it had an unbridled right to hold and maintain the fixed deposit of the Corporate Debtor in light of the foreign currency facility extended by the Respondent to RITL. It is further stated that, as per section 171 of the Indian Contract Act, 1882, banks are permitted to, in the absence of a contract to the contrary, to retain as a security for general balance of account, any goods bailed to them.

4. Heard learned Counsel and perused the material available on record.

4.1. We find that no credit facility granted to the Corporate Debtor either singly or jointly with others is due and recoverable from the Corporate Debtor. The Respondent has made claim over the FDR of the Corporate Debtor submitting that it had advanced credit facilities to RITL and the same are outstanding. We further finds that no claim has been filed by the Respondent in the CIRP of the Corporate Debtor and the Resolution Plan in case of RITL has been approved by this

Tribunal thereby extinguishing all debts owed by it to its creditors, which includes the Respondent also.

4.2. We find that the dispute arises from the interpretation of words contained in the said Letter of lien, which reads as “*whether singly or jointly with another or others in connection with the credit facilities provided to the Corporate Debtor*”. It is the contention of the Applicant that the words jointly with another or others have to be read signifying credit facilities availed jointly with one person or more than one person. Per contra, the Respondent’s case is that it had lent the money to RITL and the word “Others” include credit facilities extended to any third person, dehors the Corporate Debtor and it ought to convey the meaning that the Corporate Debtor had agreed to extend the security of this FDR to the debts owed by its other companies.

4.3. We find that the relevant para 1 contains the Letter of lien and reads as follows –

*“That you may hold all securities belonging to us (which may now be in your possession or which may at any time hereafter come into your possession) and the proceeds thereof respectively not only for the specific advance made thereon but also as security for any other moneys now due or which may at any time be due from us to you, which singly or jointly with another or others in connection with credit facilities provided to us by you”.*

4.4. We find that the letter of Lien has been executed by the Corporate Debtor and said Letter authorises the Respondent to hold such FDR as security in connection with credit facilities provided to Corporate Debtor by the Respondent. The said Letter can not be read so as to assume that the word “us” includes the associates, subsidiaries or holding companies of

the Corporate Debtor. This is clear from the reading of another para 10 contained in the said letter of lien which reads as follows –

*“That in addition to any general lien or similar right to which you as bankers may be entitled by law, you may at any time and without notice to us combine or consolidate all or any of our accounts with the liabilities to you and set off or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of our facilities including without limitation to all liabilities that are in relation the credit facilities provided to us by you on any other account or in any other respect, whether such liabilities be actual or contingent, primary or collateral and several and joint”.*

4.5. The words “us” or “our” connotes the Corporate Debtor and are invariably qualified by the credit facilities, which clearly indicates the Corporate Debtor has to be borrower to exercise the right of lien and set-off as contemplated in the said Letter of Lien. Any other interpretation would result into violence with the plain meaning of the words in the absence of specific inclusion of associates, subsidiaries or holding companies within the ambit of “us” or “our”.

4.6. Further, the words “*whether singly or jointly with another or others in connection with the credit facilities provided to the Corporate Debtor*” have to be read together and in conjunction with the words “*for any other moneys due* or which may at any time be due from the Corporate Debtor to the Respondent”. Accordingly, we are of considered view that the words “*whether singly or jointly with another or others*” postulates three cases i.e. (i) credit facilities taken singly; (ii) credit facility taken jointly

with another (one person); and (iii) credit facility taken jointly with others (more than one person).

4.7. Further Section 171 of the Indian Contract Act is not applicable to present case, as it extends the general lien to all borrowings from a bank by a person, and not to the borrowings made by a third person, even though such third person may be associates, unless specifically agreed by the parties.

4.8. Accordingly, we have no hesitation to hold that the Respondents have erred in extending the lien over such FDRs to secure the credit facilities extended to RITL. Further, even if the Applicant had any claim against the assets of the Corporate Debtor, as is pleaded, the Applicant ought to have filed a claim in accordance with the provisions of Code. In the absence of any claim in the CIRP of the Corporate Debtor, we are of considered view that the contention of the Respondent are devoid of any merit. Accordingly, we direct the Respondent to lift/ release/ remove the lien marked on the fixed deposit no. 01660001000000994430000 of the Corporate Debtor and release the funds along with interest accruing thereon up to the date of remittance to the account as communicated by the Applicant within 7 days from the date of communication of this Order.

5. In view of foregoing, IA 1943 of 2020 is allowed and disposed of accordingly.

**Sd/-**

**Prabhat Kumar**  
Member (Technical)

**Sd/-**

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