

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

IA 734/MB/2020

in

C.P. (IB) 1385/MB/2017

Under Section 60(5) of the I&B  
Code, 2016

Power HF India Private Limited  
...Applicant

Vs.

Resolution Professional  
...Respondent

In the matter of:

Ericsson India Private Limited  
... Petitioner

Vs.

Reliance Infratel Limited  
...Corporate Debtor

Order Dated: 19<sup>th</sup> August 2020

Coram:

Hon'ble Janab Mohammed Ajmal, Member (Judicial)

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

For the Applicant: Mr Rohit K. Aggarwal a/w Ms Gunjan Sinha Jain i/b. Suri & Co. and Mr Devesh Juvekar a/w Mr Dikshat Mehra and Mr Chintan Gandhi i/b. Rajani Associates.

For the Respondent: Mr Gaurav Joshi, Senior Advocate a/w Ms Meghna Rajadhyaksha, Mr Rishabh Jaisani & Ms Kriti Kalyani i/b. Shardul Amarchand Mangaldas.

ORDER

*Per: V. Nallasenapathy, Member (Technical)*

1. This is an application filed by the Applicant/Operational creditor of the Corporate Debtor seeking the following reliefs:
  - a. Pass a direction to the Resolution Professional for releasing the admitted amount of Rs.33,50,82,835/- to the Applicant to enable it continue rendering services to the Corporate Debtor which are essential services;*
  - b. Set aside the part rejection of the claim as made by the Applicant by the Resolution Professional and direct the Resolution Professional to admit the entire claim made by the Applicant arising out of the General Terms and Conditions for Services dated 07.09.2012 and extensions thereof and/or invoices raised by the Applicant for the services rendered to the Corporate Debtor.*
  - c. Restrain the Resolution Professional from acting upon any decision taken or approval given by the CoC in furtherance of the CIRP of the Corporate Debtor till the final decision of the present application.*

2. The Applicant submits that the Corporate Debtor was put under CIRP by an order of this Tribunal dated 15.05.2018. The Applicant submits that they have rendered essential services to the Corporate Debtor by maintaining the Diesel Generator Sets (DG Sets) attached to the mobile towers owned by the Corporate Debtor. It is submitted that, the Applicant in response to the invitation of claims published by the Resolution Professional (RP), filed his "Form-B", as annexed at 'Annexure-J' to this application and as stated by the Applicant in Para 14(x) at Pg. 10 & 11 of his Convenience Compilation, claiming a sum of Rs.52,07,33,618/-. The relevant details of the claim in "Form-B" are extracted below:

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Creditor continues to provide the Services to the Corporate Debtor till date. The copy of the third extension of the GTC dated 01.04.2019 is annexed herewith and marked as **Annexure H.**

- viii) It is further pertinent to state that post the execution of the Third extension of GTC, emails dated 11.03.2019 and 09.04.2019 were issued by the Corporate Debtor to the Applicant Company sharing the final locations pursuant to which the Applicant Company provided services to the Corporate Debtor. As per the Statement of account maintained by the Applicant Company in ordinary course of business a sum of Rs 6,42,05,361/- is due and payable to the Corporate Debtor for the essential services provided by the Applicant Company to the Corporate Debtor from 01.04.2019 till 30.04.2019. The copy of the Statement of Account reflecting the payments due from the Corporate Debtor to the Applicant Company for the period 01.04.2019 till 30.04.2019 is annexed herewith and marked as **Annexure I.**



- ix) On account of services carried out by the Operational Creditor for the Corporate Debtor, the latter as on 07.05.2019, is liable to pay an aggregate sum of Rs. 520,733,618/- (Rupees Fifty Two Crore Seven Lakhs Thirty Three Thousand Six Hundred Eighteen). Undisputedly, the Corporate Debtor has failed to make the above payments to the Operational Creditor in respect of its pending invoices for Services rendered by the Operational Creditor at different intervals as mentioned above.
- x) That, pursuant to the commencement of the Corporate Insolvency Resolution Process (CIRP) on 15.05.2018, and invitation of claims by the Interim Resolution Professional

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vide public notification dated 07.05.2019, the Applicant submitted its claim on 17.05.2019 which was subsequently revised by the Applicant on 07.11.2019 in Form B under the CIRP Regulations along with the relevant documents substantiating the claims made on behalf of the Applicant. The copy of the Form B- Proof of claim submitted by the Applicant on 07.11.2019 along with the documents in support thereof is annexed herewith and marked as **Annexure J.**

- xi) In order to expedite the determination of claims by the Resolution Professional, the Applicant issued an emails dated 11.11.2019 and 29.11.2019 to the Resolution Professional clearly indicating that owing to pendency of payment of huge amount by the Corporate Debtor, the Applicant is facing serious cash crunch situation and is not in a position to pay its staff as well as suppliers/vendors who had/have been supplying materials including lube oil, spare parts etc., and also rendering assistance of the Applicant company in providing continual services to the Corporate Debtor. The email further categorically stated that with the above situation, it has become extremely difficult for the Applicant Company to continue its business operations and the same would come to a grinding halt in case the pending dues of the Applicant Company against the Corporate Debtor are not released immediately. The copies of the email dated 11.11.2019 and 29.11.2019 is annexed herewith and marked as **Annexure K.**



- xii) The Applicant in furtherance to the aforesaid emails, also issued an email dated 01.12.2019 to the Corporate Debtor's authorized representative informing him that in view of the precarious financial situation of the Applicant Company, it would not be able to continue rendering services to the Corporate Debtor which in turn would affect the viability of the latter inasmuch as it would

ANNEXURE - J

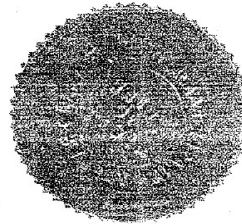
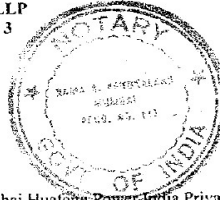
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FORM B

PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES

07.11.2019

To  
 Mr. Anish Niranjana Nanavaty  
 Resolution Professional of Reliance Infratel Limited  
 Deloitte Touche Tohmatsu India LLP  
 Indiabulls Finance Center, Tower 3  
 27<sup>th</sup> Floor, Senapati Bapat Marg,  
 Elphinstone Road, (West),  
 Mumbai- 400013



From  
 Harish Prabhakar Jere, Director  
 PowerHF India Private Limited  
 (formerly known as Shandong Weichai Huafeng Power India Private Limited)  
 525, 5<sup>th</sup> Floor, DLF Tower-A, Jasola Vihar,  
 New Delhi - 110025

Re: Our previous Proof of Claim dated 17.05.2019 filed before Mr. Manish Dhirjlal Kaneria (the Insolvency Resolution Professional appointed) under Corporate Insolvency Resolution Process in respect of Reliance Infratel Limited under Insolvency and Bankruptcy Code, 2016

Sir,

Subject: Submission of revised proof of claim in respect of Corporate Insolvency Resolution Process of Reliance Infratel Limited under Insolvency and Bankruptcy Code, 2016

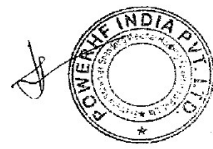
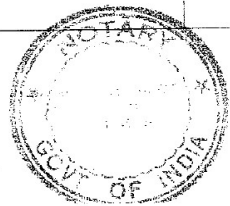
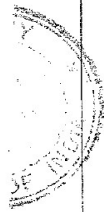
I, Harish Prabhakar Jere, Director of PowerHF India Private Limited (formerly known as Shandong Weichai Huafeng Power India Private Limited), hereby submit this revised proof of claim in respect of the corporate insolvency resolution process in the case of Reliance Infratel Limited. The details for the same are set out below:

PARTICULARS	
1. NAME OF OPERATIONAL CREDITOR	PowerHF India Private Limited (formerly known as Shandong Weichai Huafeng Power India Private Limited)  Certificate of Incorporation pursuant to change of name issued by the Registrar of Companies, Delhi is enclosed hereunder as Annexure A.
2. IDENTIFICATION NUMBER OF	Corporate Identification Number (CIN) -



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<p>OPERATIONAL CREDITOR (IF AN INCORPORATED BODY, PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)</p>	<p>U45207DL2009PTC186478 Registration No. - 186478</p>
<p>3. ADDRESS AND EMAIL ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE</p>	<p><b>PowerHF India Private Limited</b> <b>Registered Office:</b> 525, 5<sup>th</sup> Floor, DLF Tower-A, Jasola Vihar, New Delhi - 110025. <b>Corporate Office:</b> A-199, TTC Industrial Area, MIDC, Khairane, Navi Mumbai - 400710. <b>Kind Attn:</b> Harish Prabhakar Jere E-Mail: harishjere@powerhf.com Mobile No.: 9820102746</p>
<p>4. TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)</p>	<p>Outstanding Amount - <b>Rs.520,733,618/- (Rupees Fifty Two Crore Seven Lakhs Thirty Three Thousand Six Hundred Eighteen)</b> (Including Tax Deducted at Source not deposited - Rs.30,024,729/- and Differential Tax Payment Due to Non-Submission of C Forms - Rs.15,602,603/-) <b>Total Claim - Rs.520,733,618/- (Rupees Fifty Two Crore Seven Lakhs Thirty Three Thousand Six Hundred Eighteen)</b></p>
<p>5. DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED</p>	<p>(i) Work Orders / Purchase Orders issued by Reliance Infratel Limited on the Operational Creditor from 28.07. 2009 till 31.03.2012 (enclosed as <b>Annexure B (Colly.)</b>) (ii) Pending invoices from 02.11. 2009 till 31.03.2012 (enclosed as <b>Annexure C (Colly.)</b>) (iii) General Terms and Conditions (GTC) dated 07.09.2012 (effective from 01.04.2012), First Extension of GTC dated 26.09.2017 (effective from 01.04.2012) and Second Extension of</p>



3. The Applicant further submitted that the above claim in Form-B is the revised claim dated 07.11.2019. The Applicant even though submitted that the original Form-B was submitted on 17.05.2019, the Applicant has not enclosed the same to his application but, now the Applicant claims that RP has to process the claim based on the original claim filed on 17.05.2019. The Applicant in his Written Submissions at Para 5 submitted as below:

the services rendered by the Applicant to the Corporate Debtor as per the industry practice is not available on credit basis and can only be availed upon cash payment. Therefore, non-payment of even part of the invoices for the services rendered by the Applicant virtually negates the capability of the Applicant Company to continue providing the services which are indispensable for the Corporate Debtor to continue its operation of providing mobile connectivity.

- 3) The Applicant is further constrained to approach this Hon'ble Tribunal seeking setting aside of part rejection of its claim for an amount of INR 18,56,50,783/- by the Resolution Professional without any reason whatsoever, despite the fact that the said claim was duly substantiated by way of cogent evidence. It is imperative to state that the Applicant is completely in dark as to what prevailed with the Resolution Professional for rejecting the part claim, and, despite having requested the Resolution Professional to disclose reasons for such rejection the Resolution Professional has chosen not to communicate any reasons. Thus, the rejection of the part claim by the Resolution Professional is *ex facie* arbitrary and plainly contrary to mandate of law as ascribed under Regulation 14 of the CIRP Regulations.
- 4) The Claim by the Applicant raised before the Resolution Professional under Form B-Proof of Claim as per the provisions of the Insolvency and Bankruptcy Code, 2016 was to the tune of INR 520,733,619/- for the dues outstanding from the Corporate Debtor for the invoices raised prior to 07.05.2019 i.e. the date of commencement of the Corporate Insolvency Resolution Process (CIRP) (Refer to PDF Pages 19-30 of the Convenience Compilation). The same was annexed as ANNEXURE J to the present application.
- 5) The summary of invoices due and payable by the Corporate Debtor till 30.04.2019 was annexed along with the Claim-Form B

filed before the Resolution Professional which were annexed to the present application as Annexure E (*PDF Pages 31-55 of the Convenience Compilation*), Annexure G (*PDF Pages 56-82 of the Convenience Compilation*), Annexure H (*PDF Pages 83-85 of the Convenience Compilation*) and Annexure B (*PDF Pages 86-87 of the Convenience Compilation*). The claim was divided in four periods, the details of which are as below:

S No.	<u>Period of Due</u>	<u>Summary of Invoices</u>	<u>Outstanding Amount</u>
1.	Outstanding dues for Services provided/invoices raised from 02.11.2009 till 31.12.2012	<i>PDF Pages <u>31-55</u> of Convenience Compilation</i>	Rs 13, 48,70,540/-
2.	Outstanding dues for Services provided/invoices raised from 01.04.2012 till 31.03.2016	<i>PDF Pages <u>56-82</u> of Convenience Compilation</i>	Rs 28,95,26,046/-
3.	Outstanding dues for Services provided/invoices raised from 01.04.2016 till 31.03.2019	<i>PDF Pages <u>83-85</u> of Convenience Compilation</i>	Rs 9,65,62,453/-
4.	Outstanding dues for Services provided/invoices raised from 01.04.2019 till 30.04.2019	<i>PDF Pages <u>86-87</u> of Convenience Compilation</i>	Rs 6,42,05,361/-
	Total Amount Due		Rs 585,164,401/-
	Amount received from the Corporate Debtor for the above invoices		(Rs 6,42,05,361/-)

Net outstanding Due for the period 02.11.2009 till 30.04.2019	<b>PDF Page 88 of Convenience Compilation</b>	Rs 520,733,618/-
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- 6) After the submission of the Claim, the Resolution Professional vide determination published on 23.12.2019 @ Annexure M to the application and **PDF Pages 89-90 of the Convenience Compilation** admitted the claim for part amount of Rs 33,50, 82, 835/- and rejected the claim for an amount of Rs 18, 56, 50, 783/-. No reasons for rejection are evidently forthcoming from Annexure M and the said position has not been disputed by the Counsel for Resolution Professional during the course of hearing on 29.07.2020.
- 7) Constrained by the arbitrary and whimsical approach of the Resolution Professional in rejecting the part claim which was bereft of any reasoning whatsoever as also for other reliefs, the Applicant approached this Hon'ble Tribunal by way of the present application filed on 26.02.2020.
- 8) The reasons for the rejection of the part claim was revealed by the Resolution Professional vide Reply Affidavit dated 23.07.2020 filed before this Hon'ble Tribunal (**PDF Pages 91-104 of Convenience Compilation**).
- 9) The stand of the Resolution Professional seeking dismissal of the present application preferred by the Applicant are liable to be rejected in view of the submissions made below:

S No.	<u>Prayer of the Applicant</u>	<u>Stand of the RP in the Reply Affidavit</u>	<u>Submission of the Applicant PowerHF</u>
1.	Release of Admitted amount in the sum of Rs	Para 19 of the reply of RP states that prayer seeking release of past dues is not maintainable	The Applicant is rendering essential services to the Corporate Debtor which requires provisioning of DG Sets which are procured, operated and maintained on the basis of running

4. When we see the calculation in the above table the total amount due is Rs.58,51,64,401/- and when the payment of Rs.6,42,05,361/- is deducted the balance works out to Rs.52,09,59,040/-. However, the Applicant states that the net outstanding is Rs.52,07,33,618/-. Further, the RP submits that the statement annexed to the email dated 19.11.2020 sent by the Applicant, has enumerated the invoices which shows the balance due as Rs.51,92,20,209/-. However, the Applicant submits that the statement of account sent by him is for balance of Rs.57,09,85,182/- as stated on Pg. 10 of Written Submissions of Applicant:

		<p>herewith at <i>(PDF Pages 189-192 of the Convenience Compilation</i>. Apart from Exhibit B (Colly), the email also contained an excel sheet clearly stating that the total amount due from the Corporate Debtor for past period as well as post CIRP period is INR 570,985,182/- (and not INR 51,92,20,209/- as sought be conveyed by Exhibit B (Colly).</p> <p>It is submitted that the RP has no power or jurisdiction to traverse beyond the Claim- Form B a/w documents appended thereto filed by the Applicant strictly in consonance with the provisions of Insolvency and Bankruptcy Code, 2016 to reject any amount on the basis of subsequent email which was never sent to the RP in the first place. The rejection therefore is clearly against the provisions of CIRP Regulations, in particular Regulation 12, 13 and 14 of the CIRP Regulations, 2016.</p>
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- 10) In view of the submissions made above, it is submitted that faulty rejection of the part claim in the sum of Rs 18, 56, 50, 783 by the Resolution Professional against the dues payable to the Applicant by the Corporate Debtor arising before the commencement of CIRP i.e. 07.05.2019 has resulted in downsizing of the claimed amount by the Resolution Professional in arbitrary manner which severely prejudices the Applicant as the resolution plan, if approved would not take into consideration the aggravated amount of monies payable to the Applicant.
- 11) In view of the submissions made above, the present application deserves to be allowed in favor of the Applicant with costs.

5. From the above we can easily say that the Applicant is confounding the confusion in the amount claimed at various stages as below:
  - A. Applicant states that the original claim was filed on 17.05.2019 – But no documents are annexed to the application.
  - B. Applicant submitted that revised claim was filed on 07.11.2019 for Rs.52,07,33,618/-, whereas vide the email statement sent on 19.11.2019 the details were given for Rs.51,92,20,209/-.
  - C. However, the Applicant submits that the email statement sent on 19.11.2019, claimed an amount of Rs.57,09,85,182/-.
  - D. The calculation shown in the Written Submissions on Pg. 6, shows that the claim is for Rs.52,07,33,618/-, whereas the actual calculation shows that the claim should have been for Rs.52,09,59,040/-.
  
6. The RP in his response submitted that he has received the claim for Rs.52,07,33,618/- on 07.11.2019 however, the Applicant by email dated 19.11.2019 has given details for Rs.51,92,20,209/- and hence for processing the claim the RP has taken this figure as claim amount. Further, the RP while so processing the claim found that, the invoices to the extent of Rs.4,53,41,866/- pertains to the invoices during CIRP period and hence the claim to the extent of Rs.4,53,41,866/- is rejected by the RP. RP further submits that this amount has also been paid as CIRP Cost.

7. RP further submits that invoices to the extent of Rs.14,03,08,917/- were relating to purchase orders raised by affiliate concerns and supplies made to the affiliate concerns of the Corporate Debtor. All these invoices were to the extent of Rs.14,03,08,917/- raised on the affiliates of the Corporate Debtor. In this respect the Applicant submits that it was the usual practice of the Applicant to raise invoices on the Corporate Debtor for the supplies made to the affiliate concerns of the Corporate Debtor. The Applicant relies on the General Terms & Conditions (GTC) entered into between the Applicant and the Corporate Debtor on 07.09.2012 and renewed subsequently. Wherein, it is submitted that the Corporate Debtor is liable to make payments even for the supplies made to the affiliate concern of the Corporate Debtor. However, the RP submits that Clause 1.B.3 of GTC provides as below:

- 1. Where any Reliance affiliate issues a Purchase Order ("PO"), such PO shall be deemed to be issued as per the provision of this Agreement and contractor shall treat such PO in the same manner as if Reliance had issued the PO.*
- 2. Reliance affiliate who issues a PO agrees to be bound by the term of the Agreement.*
- 3. The Reliance affiliate placing a PO shall be primarily liable to the contractor for payments of all amounts due thereunder.*

Therefore, we are unable to accept the argument of the counsel for the Applicant that the services rendered or goods supplied to the affiliate concerns have to be paid by the Corporate Debtor in view of the prevailing practice of the parties and this submission

of Applicant cannot be accepted as somebody else's liability cannot be pasted on the Corporate Debtor based on the practice as claimed. Even the GTC relied (supra) by the Applicant, clearly states that the primarily liability is on the affiliate concerns only. No material is placed before us to indicate that any claim was raised with the affiliate companies for the services rendered. In view of this, the RP is right in rejecting this part of the claim to the extent of Rs.14,03,08,917/-.

8. However, it is pertinent to note here that, the RP himself had stated that he has admitted the Applicant's claim of Rs. 33,50,82,835/- and has rejected the claim of Rs.18,56,50,783/- (being Rs.14,03,08,917/- relating to purchase orders raised by affiliate concerns and Rs. 4,53,41,866/- pertaining to the invoices during CIRP period). So, the total works out to Rs.52,07,33,618/- but RP submitted that he had considered the email statement of 19.11.2019 wherein the amount due was Rs.51,92,20,209/-. Thus, from RP's response it is evident that the RP has considered the Applicant's total claim of Rs. 52,07,33,618/- but the RP has submitted that he has relied on the summary sheet emailed by the Applicant on 19.11.2019 to identify the invoices. This adjudication by the RP is creating the uncertainty and basis of disagreement between the parties, because the Applicant is claiming Rs. 52,07,33,618/- and has annexed documents in support in his Form-B and the RP having decided the claim of Rs.52,07,33,618/- is submitting that he has relied on the email of 19.11.2019 as per which email the Applicant's claim comes to Rs.51,92,20,209/-. This debating situation needs to be settled.

9. Thus, in view of the fact that there is an original claim which has been revised on 07.11.2019 and inconsistent statements given by the Applicant at various points of time and also the imprecise adjudication of claims by the RP, the RP is hereby directed to have a fresh look to the claim taking into account the original 'Form-B' filed by the Applicant and determine the claim amount taking into account the above observations of this Bench regarding the rejection of the portion of claim. The RP is directed to decide the claim afresh within a period of 3 (three) weeks from today.
10. In view of the above order & observations of this Bench, the determination of claim by RP published on 23.12.2019, with respect to the present Applicant, is set aside. Further, the Applicant's request for release of the admitted amount of Rs.33,50,82,835/- now, does not survive and the same is rejected.
11. IA No. 734 of 2020 is accordingly disposed of.

Sd/-

V. Nallasenapathy  
Member (Technical)

Sd/-

Mohammed Ajmal  
Member (Judicial)