

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) Nos. 255-256 of 2018**

**IN THE MATTER OF:**

**Mr. Punit Garg** **...Appellant**

**Vs**

**Ericsson India Pvt. Ltd. & Anr.** **....Respondents**

**With**

**Company Appeal (AT) (Insolvency) Nos. 257-258 of 2018**

**IN THE MATTER OF:**

**Satish Seth** **...Appellant**

**Vs**

**Ericsson India Pvt. Ltd. & Anr.** **....Respondents**

**With**

**Company Appeal (AT) (Insolvency) Nos. 259-260 of 2018**

**IN THE MATTER OF:**

**Mr. Suresh Madihally Rangachar** **...Appellant**

**Vs**

**Ericsson India Pvt. Ltd. & Ors.** **....Respondents**

**Present:**

**For Appellants:** **Mr. Kapil Sibal, Sr. Advocate with Ms. Shally Bhasin, Mr. Ankur Saigal, Mr. Chaitanya Safaya, Ms. Shruti Garg, Mr. Prateek Gupta and Ms. Surabhi Limaye, Advocates.**

**For Respondents:** **Mr. Salman Khurshid, Mr. Arun Katpalia and Mr. Anil K Kher Sr. Advocates with Mr. Praveen Mittal, Ms. Gitanjali Kapur, Ms. Shubhi Sharma, Mr. Samakhs Goyal, Mr. Kunal Kher, Mr. Rahul Krishna, Mr.**

**Vishal Garg and Ms. Namita Sharma,  
Advocates.**

**Mr. Tushar Mehta, ASG, with Ms. Manshi  
Kapur, Mr. Sanjay Kapur, Ms. Megha  
Karnwal, Advocates for Impleader-SBI.**

**Mr. Rajeeve Mehra, Senior Advocate with  
Mr. Divyam Agarwal and Ms. Pallavi  
Kumar, Advocates for Impleader,  
Standard Chartered Bank**

### **ORDER**

**30.05.2018-** These appeals have been preferred by the Appellants-Directors and Shareholders of 'Reliance Infratel Ltd. '; 'Reliance Telecom Ltd.' and 'Reliance Communications Ltd.' against the common orders dated 15<sup>th</sup> May, 2018 and 18<sup>th</sup> May, 2018, passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby and whereunder, the application(s) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") preferred by the Respondent- 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') have been admitted, order of 'Moratorium' has been passed and 'Insolvency Resolution Professional' has been appointed.

Apart from the ground that an arbitration proceeding is pending and the Hon'ble Supreme Court has passed an order, some other grounds have also been taken to assail the impugned orders.

2. The 'Financial Creditors'- 'Joint Lenders Forum', some other Banks and 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') have appeared. It is informed that interests of a number of Banks are involved who are awaiting the decision of this Appellate Tribunal as they intend to recover the amount.

3. Mr. Tushar Mehta, learned Senior Counsel for the 'Joint Lenders Forum'- ('Financial Creditors') submitted that they have reached an agreement with the 'Corporate Debtors' for sale of assets of the 'Corporate Debtors', pursuant to which, the 'Financial Creditors' can recover a sum of Rs. 18,100 crores approximately. He further submits that on re-structuring and sell of assets, the 'Financial Creditors' can recover Rs. 37,000 Crores approximately.

4. According to them, in view of the impugned order, the Bank is not in a position to recover the amount and there is recurring loss of more than crores per day.

5. Mr. Rajeev Mehra, learned Senior Counsel appearing on behalf of the 'Standard Chartered Bank' has also taken similar plea and supported the stand taken by the learned Senior Counsel for the 'Joint Lenders Forum'.

6. Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of the Appellants submitted that if the impugned order is stayed and/or set aside, the parties may settle the matter.

7. The case was taken up yesterday (29<sup>th</sup> May, 2018) and on the request of the parties, the case was adjourned to find out whether the Appellants and the 'Operational Creditors' can settle the matter.

8. Mr. Salman Khursid, Mr. Arun Kathpalia and Mr. Anil Kher, learned Senior Counsel appear on behalf of the 'Operational Creditors' in the respective cases. They submitted that the Respondent- 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') has agreed to settle the matter if upfront payment of Rs. 600 Crores (Rupees Six hundred Crores Only) is made by the Appellants/'Corporate Debtors'.

9. Mr. Kapil Sibal, learned Senior Counsel for the Appellants informed that the Appellants have agreed to pay a sum of Rs. 550 Crores (Rupees five hundred fifty Crores only) (jointly) in favor of 'Ericsson India Pvt. Ltd.'- ('Operational Creditor') and sought for 120 days' time to pay the total amount.

10. Learned Senior Counsel appearing on behalf of 'Ericsson India Private Limited'- ('Operational Creditor'), on instructions from the Respondent, informed that the 1<sup>st</sup> Respondent has agreed to receive a sum of Rs. 550 Crores (Rupees Five hundred fifty Crores only), if the total amount is paid within 120 days as proposed by the learned Senior Counsel for the Appellants.

11. Taking into consideration the stand taken by the parties and the fact that if the 'Corporate Insolvency Resolution Process' is allowed to continue, all the 'Financial Creditors' as also the 'Operational Creditors' may suffer more loss and the Appellants have made out a *prima facie* case, as agreed and suggested by learned Senior Counsel for the Appellants and learned Senior Counsel for the 'Joint Lenders Forum' and the learned Senior Counsel for the 'Operational Creditor'- 'Ericsson India Pvt. Ltd.', we pass the following orders:

- i. Until further orders, the impugned orders dated 15<sup>th</sup> May, 2018 and 18<sup>th</sup> May, 2018, passed by the Adjudicating Authority, Mumbai Bench in C.P. (IB) 1385, 1386 & 1387 (MB)/2017, shall remain stayed. The 'Resolution Professional' will allow the managements of the 'Corporate Debtors' to function. He may attend the office of the 'Corporate Debtors' till further order is passed by this Appellate Tribunal. Thereby, the 'Corporate Insolvency Resolution Process' initiated against the 'Corporate Debtors' namely— 'Reliance Infratel Ltd.'; 'Reliance Telecom Ltd.' and 'Reliance Communications Ltd.' shall remain stayed, until further orders.
- ii. The 'Financial Creditors'/'Joint Lenders Forum' with whom the assets of the 'Corporate Debtors' have been mortgaged as also the 'Corporate Debtors' are given liberty to sell the

assets of the 'Corporate Debtors' and to deposit the total amount in the account of the lead Bank of Joint Lenders Forum which shall be subject to the decision of these appeals. If the appeals are rejected, in such case, the 'Financial Creditors'/'Joint Lenders Forum' and other Banks with whom the amount is deposited, will have to return the total amount in the respective accounts of the 'Corporate Debtors'.

- iii. The Chairman, Managing Directors, Directors and other members of the 'Corporate Debtors' namely— 'Reliance Infratel Ltd.'; 'Reliance Telecom Ltd.' and 'Reliance Communications Ltd.' are directed to pay a sum of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) (jointly) in favour of 'Ericsson India Pvt. Ltd.' within 120 days i.e. by 30<sup>th</sup> September, 2018. In case of non-payment of the amount and part of the same, the concerned appeal(s) may be dismissed and this Appellate Tribunal may direct to complete the 'Corporate Insolvency Resolution Process' and may pass appropriate order. The payment of Rs. 550 Crores (Rupees Five Hundred Fifty Crores Only) in favour of the 'Operational Creditor' shall be subject to the decision of these appeals. If the appeals are dismissed, the 'Operational Creditor' will pay back the amount to the 'Corporate Debtors'.

12. The Appellants and the 'Operational Creditors' are directed to file their respective affidavits of undertaking in terms of their statement as made and recorded above within 10 days.

Let the appeals be listed 'for admission' on 3<sup>rd</sup> October, 2018.

13. In the meantime, it will be open to the parties to file Interlocutory Application if orders and directions given above are not complied. Interlocutory Application Nos. 701-702, 709-710 and 712-713 of 2018 stand disposed of with aforesaid observations and directions.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

AR/g