IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. (IB)1385, 1386 & 1387(MB)/2017

Under section 9 of the IBC, 2016

In the matter of
Ericsson India Pvt. Ltd.
....Petitioner

v/s.

1. Reliance Infratel Ltd. – CP 1385
2. Reliance Telecom Ltd. – CP 1386
3. Reliance Communications Ltd.- CP 1387

....Corporate Debtors

Order delivered on 17.05.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner : Mr. Pesi Modi, Sr. Counsel
Mr. Anil Kher, Sr. Counsel
Mr. Ashwin Aukhad (Adv.),
Ms. Niketa Shah (Adv.)

For the Respondents : Mr. U.K. Choudhary, Sr. Counsel
Ms. Alpana Ghone (Adv.), Mr. Abhishek Kale (Adv.), Mr. Deepak Deshmukh (Adv.) and Mr. Aman Choudhary (Adv.) i/b Naik Naik & Co.
Mr. Gaurav Joshi, Sr. Counsel

Mr. Fredon Devitre, Sr. Counsel } For
Mr. Hormuz Mehta } SBI
Mr. Soumitra Majundar }
i/b J. Sagar Associates }

Per: B.S.V. Prakash Kumar, Member (Judicial)

COMMON ORDER

Order pronounced on 15.05.2018

These are three separate Company Petitions 1385/2017 against Reliance Infratel Ltd, (RITL); 1386/2017 against Reliance Telecom Ltd. (RTL), and 1387/2017 against Reliance Communications Ltd. (RCom) filed by the same Petitioner, namely Ericsson India Pvt Ltd (in short "Ericsson") u/s 9 of Insolvency & Bankruptcy Code, 2016 for having defaulted in paying Ericsson to the

services rendered by it in terms of Managed Services Agreement (MSA) dated 25.01.2013 entered between these group of companies/Corporate debtors (collectively addressed as "Reliance"), in view of the same, Ericsson filed these Company Petitions for the ascertained claim made against each of these corporate debtors, for they collectively failed to pay ₹9,78,72,06,974 - the dues admittedly outstanding as on 31.03.2017, henceforth Ericsson filed separate company petitions against each of these three Reliance Companies for initiation of Corporate Insolvency Resolution process against RITL (CP1385/2017) for defaulted in paying ₹427,21,40,509, against RTL (CP1386/2017) for defaulted in paying ₹114,54,46,238, against RCom (CP1387/2017) for defaulted in paying ₹436,96,20,227 as on 31.03.2017.

2. Knowing well the Corporate Debtors not being common in these petitions, the facts and reliefs in respect to each of the companies are dealt with separately, but the submissions in these three Company Petitions being common, for the sake of brevity, this Bench essayed its observations common to all the company petitions.

3. Before going into particulars of each of the case, it is essential to narrate the business deal in between Ericsson and Reliance so as to understand the facts and legal discussion without going back and forth about the **historical facts** of the case. There is seldom anything left to discuss separately on case to case basis, except mentioning claims separately made against each of these group companies – Rcom has 96% shareholding in RITL, and 100% shareholding in RTL. For the sake of convenience, these three together are called as 'Reliance'; in fact, they address themselves upon as Reliance.

4. RCom is a telecommunications company, providing services of GSM (Voice; 2G, 3G, 4G), fixed line broadband and voice, and Direct-To-Home (DTH) in India. It is the holding company of RITL and RTL.

5. RITL is a subsidiary of RCom, wherein RCom has 96% stake, the rest is held by several minority investors, it operates as an independent wireless tower company pursuing its business plan to invest in its wireless towers portfolio and acquire additional tenants

on its towers, and functions as third party infrastructure provider offering passive infrastructure sharing to multiple wireless operators and data and entertainment provider within the industry, because it has mobile towers and optical fibre network for providing mobile and internet related services.

6. RTL is another wholly owned subsidiary of RCom, engaged in providing wireless and wire line, convergent (voice, data and video) digital network.

7. **Ericsson** is Swedish multinational telecommunications and networking company incorporated in 1876 headquartered in Stockholm providing services to various companies all over the world. This company offers services, software and infrastructure in information and communications technology for telecommunications operators, traditional telecommunications and Internet Protocol (IP) networking equipment, mobile and fixed broadband, operations and business support services, cable television, IPTV, video systems, and an extensive services operation.

8. **Ericsson India Pvt Ltd** (it is called as Managed Service Provider (MSP) in the MSA dated 25.01.2013) is a subsidiary of Swedish Ericsson, incorporated in 2008. Owing to its expertise in providing technical services of maintaining and optimising the network for wireless, maintaining the optical fibre network and managing passive infrastructure of towers, shelters and generators, Reliance having Tele-communication infrastructure such as towers and optic fibre network across India, to manage services to it, Reliance entered into the MSA with Ericsson on 25.1.2013 for availing the Managed Services aforementioned, in pursuance thereof, according to Ericsson, it deployed thousands of employees for rendering services as agreed between the Ericsson and Reliance.

9. According to Ericsson, the revenue basically generated from this business from the subscribers of Corporate Debtors/telecom operators for using voice or data services– the subscribers use the services and pay to mobile operators for using the telecom services. In India, this business is mainly based on prepaid market because the subscribers pay to the operator in advance to use the services of

mobile operator whereas other class of subscribers which are post paid subscribers generally pay the bills within 15 to 20 days of the billing cycle on monthly basis.

10. Business in between them went well for about three years, but for the last almost two years, Reliance kept on repeatedly assuring Ericsson that it would pay amount outstanding on certain dates, in the saga of it, on December 26, 2016 emailed to Ericsson a letter along with chart giving month-wise breakup of liquidation schedule saying it would make payments as mentioned in that break up chart, which is as below:

"Email dated 26.12.2016

From: Suresh Rangachar (mailto: suresh.rangachar@gmail.com)
Sent: Monday, December 26, 2016 11.31 PM
To: Praveen JohriPraveen.johri@ericsson.com
Cc: Krishna patil, Rajendra Singh, Suresh Rangachar
Subject: Letters

Praveen

Please find the letter for December and the liquidation schedule.
Will speak tomorrow afternoon on any changes you need in these to reinstall the confidence.
I am working on the 100 Cr matter and will confirm to you tomorrow.
Rajendar – Please discuss tomorrow.

Month wise Breakup
INR Cr

Sl. No.	Particulars	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17
1	Opening Payable	998										
2	Additional Invoicing	62	60	60	60	61	61	38	38	32	32	32
3	Proposed Payments	382	30	0	0	126	181	158	158	162	250	86
3.1	For Current Outstanding					61	61	38	38	32	32	32
3.2	For old outstanding	382	30			65	120	120	120	130	130	54
4	Due & Payable (1+2+3)	678	707	767	827	762	642	522	402	272	54	0

"

11. Again on 28.12.2016, Reliance gave another undertaking by its President Commercial that from April 1, 2017 to make monthly payment for monthly services, and also to pay a minimum amount of ₹62 crores (Rupees Sixty two Crores Only) per month commencing

from April 1, 2017 to clear entire overdue no later than 20th September 2017, which is as follows:

"***Undertaking from Reliance***

I, Mr. Suresh Rangachar, President Commercial duly authorised by the respective Boards of Reliance Communication Limited and Reliance Infratel Limited having their registered office at H-Block, 1st Floor, Dhirubhani Ambani Knowledge City, Koperkhairne, Navi Mumbai – 400 710 for and on behalf of both the entities hereby undertake (notwithstanding anything to the contrary that may have been discussed otherwise or stipulated in the MSA) as under:

1. To make the monthly payment for the services rendered by Ericsson under the MSA from April 1, 2017. In addition to the foregoing, will pay a minimum amount of Rs.62 Crs (Rupees Sixty two Crores Only) per month commencing from April 1, 2017 for the previous outstanding amounts; and

2. To unconditionally clear all outstanding payments no later than September 20th 2017 payable under the MSA.

Reliance Communications Ltd	*Reliance Infratel Limited*
Sd	*Sd*
Authorised Signatory	*Authorised Signatory*

Date December 28, 2016
Place: Mumbai, India"

12. In its regular exercise, Reliance sent a letter dated 28.04.2017 to Ericsson stating that as per their books as on 31.03.2017, the due and outstanding payable to Ericsson is ₹978,72,06,974, with a breakup – Ericsson RCom Reconciliation statement as on 31.03.2017 – reflecting how much is due and payable by each of these three companies to Ericsson. Though as per Ericsson books, Ericsson Counsel says, more is payable than admitted claim in the balance confirmation letter sent by Reliance to Ericsson, it has never raised any dispute over the above referred admitted claim. The letter dated 28.04.2017 and reconciliation statement sent by Reliance are as follows:

"Reliance

To

Date Apr 28th 2017
Dear Sir/Madam,

For the purpose of the audit of our accounts, we would be grateful if you could confirm the balance due to you as on March 31, 2017 directly to our auditors:

Sr. No.	*Purpose of Billing*	*Amount*
1.	*Managed Services*	*Rs.9,78,72,06,974/-*

If you are unable to agree to the above balance, please respond directly to our auditors, giving full details of the difference.

Thank you for your co-operation,

Yours faithfully, *Stamp of the company*

To, *Kind Attn: Aseem Sharma* *B S R & Co LLP* *5th Floor Lodha Excelus,* *Apollo Mills Compound,* *N. M. Joshi Marh,* *Mahalakshmi, Mumbai -400 011.*	*To,* *Kind Attn: Pradeep KhandelwalChaturvedi& Shah* *714-715, Tulsiani Chambers,* *212, Nariman Point,* *Mumbai – 400 021.*
CONFIRMATION	
*The information as stipulated above by **Reliance Communications Limited** group is correct (except as noted below).*	

Name: Vinay Damani

Designation: Business Controller *Stamp of the Company"*

Date:

Ericsson Rcom Reconciliation as at March 31, 2017:

Sr.	*Particulars*	*RCOM*	*RTL*	*RITL*	*TOTAL*
1	*Balance as per RCOM Group*				
1.01	*Vendor Balance*	*3,819,814,932*	*1,018,659,145*	*4,024,676,187*	*8,863,150,265*
1.02	*SRIR/GRIR Bal*	*98,155*		*68,97,224*	*6,995,379*
1.03	*Accounting Pending (SEM)*	*549,707,139*	*126,787,093*	*240,567,098*	*917,061,330*
1.04	*Sub Total*	*4,369,620,227*	*1,145,446,238*	*4,272,140,509*	*9,787,206,974*
2	*Signed Balance payable by RCOM as per Ericsson*	*4,185,467,870*	*1,123,293,968*	*4,078,957,383*	*9,387,719,220*
2.1	*Balance in Ericsson Books*	*4,185,467,870*	*1,123,293,968*	*5,178,957,383*	*10,487,719,220*
2.2	*Cheques issued by RCOM to be accounted by Ericsson*	-	-	- *1,100,000,000*	*-1,100,000,000*

3	Diff.	184,152,357	22,152,271	193,183,126	399,487,753
4	Reconciliation				
4.1	TDS Not Accounted by Ericsson	83,588,965	15,938,462	100,988,193	200,515,620
4.2	WCT Not Accounted by Ericsson	840,980	336,392	504,588	1,681,960
4.3	ST on SRIR/GRIR Not Accounted by RCOM Group	14,723	-	1,034,584	1,049,307
4.4	ST on SEM Not Accounted by RCOM Group	82,456,071	19,018,064	36,085,065	137,559,200
4.5	Invoice pertaining to Mar '17 accounting done in Apr '17 by Ericsson	-350,101,382	-48,602,728	-276,652,163	-675,356,273
4.6	Reconciliation Pending	-951,714	-8,842,460	-55,143,392	-64,937,567
5	Sub Total	-184,152,357	-22,152,271	-193,183,126	-399,487,753
6		-	-	-	-0

12. When all the assurances went in vain, Ericsson sent notices u/s 8 of IBC on 07.05.2017 to each of these three companies claiming payment admitted by Reliance in the balance confirmation attached to the letter dated 28.04.2017, to this section-8 notice, Reliance sent reply letter dated 19.05.2017 asking Ericsson to bear with it for some more time so that it would clear the dues when monies come from others. In this reply, nowhere has it questioned or disputed the claims, the quality of services or any breach of a representation or warranty, except saying as follows:

*"**Letter dated 19.5.2017 from Reliance***

By Registered Post AD/Courier/Email

Without Prejudice

Date: 19th May 2017

To
Kapil Kher, Advocate,
Anil K Kher& Co.,
Law Officers,
F-26, New Rajinder Nagar,
New Delhi – 110 080.

Ref: 1. Your demand notice dated 7.5.2017
2. Your demand notice dated 8.5.2017
3. Master Services Agreement dated 23.1.2013 along with the amendments thereto (MSA)

Sir,

We have received the referred notice on behalf of your client, Ericsson India private Limited (Ericsson).

We were very surprised to receive this notice when we have constantly kept Ericsson appraised of the progress being made by us and the positive impact it had including solution to the situation listed in the notice.

The following paragraphs are to formally apprise Ericsson on the various developments in the telecom sector in India as well as the progress made by us in the various strategic transactions.

Current Challenges in Telecom Sector

Telecom Sector in India is passing through unprecedented phase with declining revenues and EBITDA for all operators. A combination of intense competition, price war and the bidding race for radio waves has resulted in rapid deterioration in the financial health of telecom operators. In the last 6-9 months the situation has precipitated due to entry of a new telecom operator and its strategy of freebies to gain customer and market share. Every attempt to solve the situation between Reliance and Ericsson hit some roadblock causing the current unintended yet unfortunate situation.

Strategic Steps Taken

We are taking strategic measures to ensure the interests of all our partners are well protected. In this regard, we have taken deleveraging initiatives and made substantial progress with respect to the announced strategic transactions.

1. *Combination of the Wireless business with Aircel*

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2. *Sale of Tower Assets.*

---*As you will observe from the above, the completion of the two major transactions is mere procedural in nature. We are confident to complete the transactions by September 30, 2017.*

Way forward

Firstly, we are thankful to your client for their continued support and co-operation and we also appreciate their patience.

Reliance has been equally understanding of the stressful situation in which the contract is working. ***The deferred payments are accruing interest as stipulated in the contract. Ericsson's managed services performance has been inconsistent and there is significant scope for improvement. However, we continue to recognise the reasonable effort being put instead of strict enforcement.***

We reiterate our willingness to remain in constant communication with your client for effective resolution of all the pending matters and put a workable framework along with the completion of the two transactions.

The notices issued will have irreversible consequences for both Reliance and the current partnership with Ericsson. The action being proposed in the notices will derail the strategic initiatives taken by us and will put all the stakeholders in a bigger jeopardy. In other words, the work done, moneys earned and partnership developed over many years would be ruined by disrupting progress on initiatives that is imminent and expected to close in the next 3 to 4 months.

Recognizing the need for controlling further build-up of the problem, we are trying to put in place an arrangement working with RJioInfocomm Ltd to ensure monthly dues is paid on time. We hope to have a definitive answer on this matter by no later than 31 May 2017.

We are optimistic and sincerely hope that our above request will be considered favourably. In the meantime, we look forward to the continued support of your client and request not to initiate any coercive actions as suggested in your notices. We would be happy to provide any further clarification/information, as may be required in the matter.

For Reliance Communications Limited

Authorised Signatory"

13. Soon thereafter, the advocate of Ericsson wrote letter after letter - on June1, 2017, on June 7, 2017, on June 11, 2017, on June 14, 2017and on June 21, 2017, to Reliance stating that Ericsson intended to suspend all its services under the MSA in case of failure to pay as they had been promising to regularise the account, then Reliance (from RCom) shot another letter on 29th June 2017 to Ericsson with another break up of payment schedule for old outstanding of ₹1012crores promising as follows:

"Letter dated 29.6.2017 from Reliance to Mr. Rahul Krishna of Ericsson

Date: 29.6.2017

Mr. Rahul Krishna
Ericsson India Pvt Ltd
Ericsson Forum
DLF Cyber City
Sector 25A
Gurgaon
Haryana – 122 002.

Sub: Payment of outstanding dues under Managed Services Agreement dated January 25, 2013 between Ericsson India Pvt Ltd and Reliance Communications Ltd and Reliance Infratel Ltd.

Dear Sir,

This is in furtherance to the ongoing discussions between Ericsson India Private Limited ("Ericsson') and Reliance Communications Limited and Reliance Infratel Limited

("Reliance') for payment of outstanding dues under Managed Services Contract dated 25th Jan 2013.

1. *From July onwards, we are moving to weekly advance payments as agreed i.e. Rs.14 Cr per week. Please consider this run rate as proforma which may change pending any optimization or divesture initiatives which we expect to complete by 30th Sep 2017.*

2. *On the June and July payments to clear April and May backlog, we are to pay R.125 Cr. We have duly signed an agreement with Reliance Jio for the same of MCNs for Rs.211 Cr, which provides more than sufficient cash to meet that commitment. As part of our ongoing Strategic Debt restructuring programme, out Lenders held a meeting on Friday, 23rd June, 2017, wherein they have advised us, for the first time that any sale of property needs their specific prior approval. We have immediately made the formal request and expect to receive the approval within a week to 10 days, and will accordingly pay Rs.125 Cr well before 31st July, 2017. You will appreciate that this requirement of specific approval has suddenly been imposed by the lenders, and could not have been anticipated by us earlier, but this will not disrupt the overall schedule.*

3. *Regarding the weekly payments from August to December 2017 amounting to Rs.50.6 Cr per week (enclosed as Annexure A) to liquidate the old outstanding of Rs.1012 Cr for period upto 31st March, 2017, the SDR process does not permit us to issue unconditional instruments, such as LCs/PDCs and hence signing this letter as a form of assurance of payments.*

Ericsson being the core to Reliance operations, we are taking measures to impress upon the banks that these payments to Ericsson are very important and are confident that we will be able to achieve the pay-outs as documented.

As communicated in various emails and discussions in meetings we are diligently working to get the things resolved and we look forward to your continued support.

For and on behalf of Reliance Communications Limited

Authorised Signatory
Date 29.6.2017
Place: Mumbai

For and on behalf of Reliance Infratel Limited

Authorised Signatory
Date 29.6.2017
Place: Mumbai
Encl: Annexure A

ANNEXURE A – PAYMENT SCHEDULE FOR OLD OUTSTANDING OF INR 1012 CR

Sr. No.	Date of Payment	Mode of Payment	Amount Payable (INR Cr.)	Remark
1	04-Aug-17	RTGS / NEFT	50.6	The payment dates are indicative and there may be minor variations.
2	11-Aug-17		50.6	
3	18-Aug-17		50.6	
4	25-Aug-17		50.6	
5	01-Sep-17		50.6	
6	08-Sep-17		50.6	
7	15-Sep-17		50.6	
8	22-Sep-17		50.6	
9	29-Sep-17		50.6	

10	*06-Oct-17*		*50.6*	
11	*13-Oct-17*		*50.6*	
12	*20-Oct-17*		*50.6*	
13	*27-Oct-17*		*50.6*	
14	*03-Nov-17*		*50.6*	
15	*10-Nov-17*		*50.6*	
16	*17-Nov-17*		*50.6*	
17	*24-Nov-17*		*50.6*	
18	*01-Dec-17*		*50.6*	
19	*08-Dec-17*		*50.6*	
20	*15-Dec-17*		*50.6*	
	Sub Total (C)		*1,012.0*	

"

14. Reliance also sent another letter on 29th June 2017 stating that they are committed with other timings of pay outs with a request not to take any action under the notices already given including suspension of services which would not be in the interest of either party. With this letter, some particulars of payments are given saying that they have not been considered in the notice dated 07.05.2017. But it appears that Reliance included some payments which were already covered in the confirmation made by Reliance itself basing on their books, moreover in all their letters it has been clearly mentioned that they would make payments to the months subsequent to 31st March 2017 as well.

15. When payment has not come as assured by Reliance, since Ericsson continued incurring expenditure in rendering services to these Corporate Debtors, finally on 7th September 2017,in terms of clause 23.5.1 of the MSA issued notice for termination of the MSA to these three Corporate Debtors and also to Reliance Tech Services Pvt. Ltd. and Netigen Engineering Pvt. Ltd. stating that Reliance committed material breach of the MSA by not paying old payment as well as to the running period, by which the due outstanding increasing from time to time, Ericsson therefore has expressed, it is not commercially viable to render its services any more to the Corporate Debtors, and if payment is not made within 30 days from the receipt of the notice dated 07.09.2017, this notice shall be treated as notice of termination under clause 23.5.1 of the MSA with effect from the midnight of 11.10.2017. Responding to the same, Reliance replied on 21.09.2017 denying that there is occurrence of

"Reliance Material Breach" therefore, Ericsson is not entitled to terminate the MSA and such purported termination is misconceived and untenable because after receipt of section 8 notice under IB Code, revised repayment understanding issued by RCom to Ericsson recording the revised repayment schedule agreed between the parties, by issuing such termination notice, section 8 notice dated 07.05.2017 under IB Code could not and would not survive, because earlier demand was substituted by the schedule of payments mentioned in the revised repayment understanding. Reliance states, in view of the same, Ericsson is called upon to withdraw the same immediately and continue to perform its obligation under the MSA. Thereafter, when Ericsson did not withdraw its termination notice, Reliance on 01.11.2017 invoked Arbitration Clause under the MSA dated 25.1.2013 claiming declaration with regards to the termination of the MSA by Ericsson on 07.09.2017, which according to Reliance is unlawful and not in accordance with the terms of the MSA by further claiming damages for abrupt walk out of Ericsson from providing the services to Reliance under the MSA causing huge losses to Reliance. On having Ericsson received notice in the Arbitration Application; Ericsson filed its counter claim mentioning the dues payable by Reliance to Ericsson. On hearing the interim application, Arbitral Tribunal headed by Hon'ble Justice S.B. Sinha (Retd. Supreme Court Judge) passed an interim order on 05.03.2018 restraining the Corporate Debtors from transferring, alienating, encumbrance or disposing of its assets without specific permission/leave of the Arbitral Tribunal making it clear that the order is without prejudice to any order that may be passed by the Board or Boards of competent jurisdiction. When this order was assailed before Hon'ble High Court of Bombay, it was affirmed without interfering with interim direction given by the Tribunal. Assailing the same, when SBI filed an appeal before Hon'ble Supreme Court of India, it has been held that the principle contention of the secured creditors/appellants being that neither they are party before the Arbitrator nor is the order akin to order 38 Rule 5 of CPC, the appellants being the secured creditors of the assets of the Corporate Debtors, it has been held that the Arbitral Tribunal has no jurisdiction

to effect the rights and remedies of the third party/secured creditors in the course of determining disputes pending before it, in addition to the aforesaid holding, **the Hon'ble Supreme Court has further held that the secured creditors will proceed against the assets of the debtors in accordance with law**. Besides this, the Hon'ble Supreme Court has further held that the said order will not affect any of the remedies of either of the parties, Ericsson being a party to the proceeding it is equally applicable to Ericsson as well. By holding as above, the Hon'ble Supreme Court has stated that it has not gone into any other issue except the validity of the impugned order passed by the Hon'ble High Court of Bombay. This order was passed on 05.04.2018.

16. Now the uphill task before this Bench is to decide these cases in the backdrop of the historical facts, to fulfil its task, this Bench has first briefed facts of each of the petitions, then common discussion, thereafter conclusion of this Bench.

CP 1385/2017 against RITL

17. It is a company petition filed u/s 9 of IBC against RITL stating it has defaulted in repaying ₹427,21,40,509 to Ericsson as on 31.03.2017 including provision for value of services rendered in the month of March 2017 along with other amount due as per the Managed Services Agreement (MSA) as amended from time to time, henceforth, Ericsson, which rendered services as aforesaid, filed this company petition to initiate Corporate Insolvency Resolution Process (CIRP) against RITL.

18. Ericsson submits that though Reliance continuously made several assurances, no payment has come to Ericsson as promised by them except few crores of rupees as mentioned in Annexure-3 filed by Ericsson, those amounts have been adjusted as they suggested, therefore there is no merit in saying the payments subsequently have not been adjusted against the debt liability, because Reliance had to make payments beyond the claim placed in these cases, the reason perhaps for doing so is Reliance wanted services of Ericsson for which they agreed to make regular payments along with arrears payable to Ericsson. To prove that the claim made

by Ericsson has not been paid by RITL, Ericsson has filed the certificate given by its banks, HDFC Bank as well as Citi Bank to establish that RITL failed to pay the defaulted claim amount to Ericsson. For the outstanding due not being paid, Ericsson filed this Company Petition before NCLT Mumbai on 11.09.2017 with the particulars above mentioned.

19. To avoid repetition, the facts already mentioned above have not been repeated in each of the petitions, because except figures, facts to all these petitions are one and the same.

CP 1386/2017

20. Ericsson filed this Company Petition against RTL u/s 9 of IBC stating that for having RTL defaulted in paying ₹114,54,46,238 as on 31.03.2017 towards the services rendered by Ericsson, this Company Petition is filed to initiate Corporate Insolvency Resolution Process (CIRP) against RTL.

21. This RTL is another subsidiary of RCom, engaged in providing wireless and wire line, convergent (voice, data and video) digital network. It did not enter into the MSA along with RCom and RITL, but it has entered into a deed of adherence dated 25.01.2013 calling itself as ***Specific Reliance Affiliate***(SRA) along with RCom stating that "*in terms of MSA, the specific Reliance affiliate shall issue purchase orders and procure Managed Services from MSP (Ericsson) on the same price, terms and conditions as set forth in the MSA*" by further detailing that this deed of adherence binds RTL to the MSA entered into with the Ericsson. When this, RTL also like remaining two Corporate Debtors defaulted in making payment, Reliance as stated above sent the confirmation letter on 28.4.2017 confirming that as on 31.03.17 the Corporate Debtors' book disclose the due outstanding against RTL is ₹114,54,46,238, since the correspondence in between Ericsson and Reliance being common giving assurance after assurance asking Ericsson to remain patient, for the sake of brevity, the discussion above made is not repeated because common assurance has been given for payment of entire ₹1,012crores the same narration given above is applicable to this case as well.

22. Ericsson has, like in other cases, given separate notice u/s 8 of IBC to RTL for payment of ₹114,54,46,238 and also to inform if at all any dispute is in existence in respect to unpaid operational debt within 10 days of receipt of section 8 notice, to which, the Corporate Debtor has given common reply dated 19.05.2017 asking Ericsson to remain patient for some more time so that Reliance would be in a position to clear the dues of Ericsson, but having no payment come, Ericsson filed this case against RTL on 11.09.2017.

CP 1387/2017

23. Ericsson filed CP 1387/2017 u/s 9 of IBC against RCom stating that for having this Corporate Debtor defaulted making payment of ₹436,96,20,227 including provision for value of services rendered in the month of March 2017 along with other amount due as per the Managed Services Agreement (MSA) as amended from time to time, henceforth to initiate Corporate Insolvency Resolution Process(CIRP) against this Corporate Debtor.

24. **RCom** is a telecommunications company, providing services of GSM (Voice; 2G, 3G, 4G), fixed line broadband and voice, and Direct-To-Home (DTH), depending upon its areas of operation in India. RCom's shares are listed in both BSE & NSE. It is also the holding company of the other two Corporate Debtors.

25. Since it has broad infrastructure in relation to telecommunications, to manage this network spread among these three companies, it has engaged Ericsson by entering into MSA on 25.01.2013 because MSP (Ericsson) is in the business providing telecommunication network operations, maintenance and its related managed services. As Ericsson kept on providing managed services to these Corporate Debtors including this Corporate Debtor, when this Corporate Debtor defaulted in paying the admitted claim of ₹436,96,20,227, Ericsson issued section 8 notice on 07.05.2017 stating that this Corporate Debtor defaulted paying the aforesaid amount therefore, notifying it to the Corporate Debtor that if at all any dispute is in existence in respect to unpaid operational debt, it may be informed within 10 days of receipt of section 8 notice, failing

which, Ericsson would initiate Corporate Insolvency Resolution Process (CIRP) in respect to this company.

26. As I already stated that Reliance gave a common reply on 19.05.2017 explaining its problems to the Ericsson and also asking to remain patient for some more time until issues have been resolved. In addition to it, on 28.06.2017, sent another letter promising the petitioner that it would make advance payment on weekly basis along with simultaneous payments to clear the backlog as well by attaching an annexure saying that it would clear the entire outstanding of ₹1,012crores by paying ₹50.6 crores per week from 04.08.2017 to 15.12.2017. Finally, when due outstanding has not been paid, on 11.09.2017 Ericsson filed this Company Petition u/s 9 of IBC against this Corporate Debtor on the admitted claim basing on the confirmation sent by this Corporate Debtor to Ericsson on 28.04.2017.

Common Discussion

27. On the Company Petitions filed by Ericsson, the counsel appearing on behalf of these Corporate Debtors i.e. Reliance placed their arguments saying that this petition is not in compliance with this Code, therefore, not maintainable – Form 3 notice has not been provided with the particulars as envisaged in the form, Form 5 petition is incomplete and that the Company Petition consists of material discrepancies and this petition is hit by existence of dispute. They further submit that these petitions are against the object of the Insolvency & Bankruptcy Code depriving the interest of all the stakeholders of Reliance, hence these Company Petitions are liable to be dismissed.

28. SBI filed MA 418/2018 in CP 1387/2017 u/s 60(5) of IBC r/w Rule 11, 14 and 34 of NCLT Rules 2016, stating that this applicant Bank and 28 other banks (jointly referred as secured creditors) have granted various credit facilities RCom group companies, when RCom had slipped into NPA category w.e.f. around 26.08.2016, the total dues of secured creditors towards RCom consolidated exceeded ₹42,000crores. Due to the significant loan exposure, certain lenders of RCom constituted JLF in June 2017, thereafter decided to opt for

restructuring, resolution plan cum asset monetisation for strategic debt restructuring, sale of RCom in part or in total and any other option deemed fit for stress resolution. In progress of it, Reliance Jio Infocomm Ltd. (RJIL- in short RJio) emerged as the highest bidder for the aforesaid assets after following the transparent process by the evaluation committee. It is expected that a gross consideration of approx.₹17,300 crores will be paid by RJio for the aforementioned assets of RCom consolidated and other properties lying at Delhi and Chennai will also fetch an additional amount of around ₹800crores, thus the total realisation will be around ₹18,100crores which could directly come to the secured creditors in stages. The counsel has further pointed out that RBI had issued a fresh circular dated 12.02.2018 in respect to stress assets leaving open with two options either for restructuring in case of viable units or else to file insolvency filing in case of unviable units. In the said circular, it is further stipulated that if the restructuring not implemented within 180 days from 01.03.2018, Joint Lenders Forum (JLF) is mandated to file an insolvency application under IBC. In this scenario, the counsel submits, if these petitions are admitted, the operational creditor being admittedly unsecured creditor, in any event, Ericsson cannot lay its claim over the assets which are charged to the secured creditors unless the entire dues of the secured creditors are paid. The counsel submits that this Tribunal should look into the balance of equity as to whether admitting these Company Petitions will result in jeopardising the interest of the secured creditors, especially considering that even after sale of assets of RCom consolidated, the secured lenders still have to recover over ₹24,000crores from RCom consolidated, most of which is public money.

29. The Counsel appearing on behalf of Ericsson vehemently opposed all these contentions point by point stating how these petitions are fit for admission for initiation of CIRP.

30. On hearing the submissions of either side, the points for consideration before this Bench are principally four, which are as follows:

1. Whether the debt is in existence or not?

2. Whether occurrence of default is there or not?

3. Whether any dispute is in existence as on the date of receipt of section 8 notice by these Corporate Debtors.

4. Whether these petitions are complete as envisaged u/s 9 of IBC or not?

31. Though the point raised by SBI is not essential to decide this Company Petition, still for the sake of completeness, the application filed by one of the financial creditors namely SBI is also taken into consideration for determination of the point mentioned below:

5. Whether SBI/Financial Creditors have any locus to file an application before this Bench, if so, whether any merit is there as against the petitions filed under IBC.

1. Whether the debt is in existence or not?

32. This point need not be a point for discussion if the bare-bones of the facts are set against the legal proposition in respect to section 8 and 9 are taken into consideration, still the debt being huge and the Corporate Debtors being large companies, by hearing heavy weight arguments from either side, this Bench is compelled to set out the facts reflecting that the debt is in existence.

33. It goes without saying that these Corporate Debtor companies are in the business of telecommunication, in pursuance thereof, these companies entered into MSA on 25.01.2013 with Ericsson which is considered to be an expert in providing managed services to telecommunication infrastructure companies, ever since Ericsson kept providing managed services as defined in the MSA to these companies all over India by engaging thousands of employees and the same is not disputed by Reliance, therefore it is hereby held that Reliance received Managed Services from Ericsson from 25.01.2013 until before services were terminated.

34. Thereafter, it is a fact that Reliance for having itself on 28.04.2017 sent consolidated figure of dues with break ups payable to Ericsson as on March 31, 2017 for confirmation, thereafter

innumerable letters requesting time for payment detailing in how many instalments it would pay to Ericsson, all this correspondence amounts admission of not only existence of debt but also existence of default. It is not out of context to mention that Reliance has not disputed the statement made on 28.04.2017 stating that as per Reliance Books, the balance due and payable to Ericson as on 31.03.2017 is ₹978,72,06,974, the same is the claim made by Ericsson.

35. As per the letter dated 28.04.2017, the due outstanding in aggregate against these three Corporate Debtors as on 31.03.2017 was ₹978,72,06,974 which separately has come to ₹436,96,20,227 against RCom, ₹427,21,40,509 against RITL,₹114,54,46,238 RTL. Ericsson has stated that though the claim against these companies in its books showing more than what has been admitted by these Corporate Debtors, it has claimed only the amounts admitted by Reliance in the confirmation letter sent to the petitioner on 28.04.2017. Even thereafter also, there is not even a whisper from the Corporate Debtors' side stating that the Corporate Debtors have dispute in respect to the debt amount claimed by Ericsson, or in respect to the quality of goods or services or in respect to breach of representation or warranty, in this background, the only inference that could be drawn is that debt is in existence as on the date of filing these Company Petitions.

2. Whether occurrence of default is there or not?

36. As to this point is concerned, the counsel for Reliance have come out with a unique argument saying that for schedule for payment has been rescheduled after issual of section 8 notice, the default that was in existence as on the date of receipt of section 8 notice would not survive for filing these company petitions. If we revisit the facts, it is evident that no schedule was given for payment by Reliance, section 8 notices have been given basing on non-payment of dues as per the balance confirmation given by Reliance on 28.04.2017, there is no schedule, or reschedule, of course Reliance sent several request letters with break up charts to instil confidence so that Ericsson would not proceed against Reliance,

ultimately when nothing happening as assured by Reliance, ultimately on 11.09.2017, Ericsson filed these cases against Reliance. Therefore today there is material before us making it clear that Ericsson gave section 8 notice on 07.05.2017 thereafter on 19.05.2017 Reliance gave reply saying that these companies are under stress because of various reasons, whereby Reliance requested Ericsson to remain patient for they were likely to receive money from restructuring and other sources, by saying so, these Corporate Debtors giving assurance after assurance volunteering to pay around ₹60crores per week, will never replace occurrence of default. Whether non-payment of debt amounts to default or not depends upon the agreement entered between them. It is understandable if any clause in the agreement in the MSA saying that the claims are premature, but it is not the case and it is not the argument of Reliance. And no material is present disclosing that the dues outstanding are not matured and not payable to Ericsson except saying that since they have given schedule for payment, default would not survive.

37. Another Senior counsel Mr Joshi appearing on behalf of one of the Corporate Debtors submits that since Ericsson itself has stated that Reliance having failed to pay as per the schedule given by them in the notice of termination sent by Ericsson, the cause of action for filing case basing on earlier demand u/s 8 of IBC would no more remain in existence because Ericsson itself stated in the termination notice that Reliance failed to adhere to make payment as per the plan given by them.

38. This counsel has further propounded an argument saying that this understanding of rescheduling of payment is novation to the earlier default; thereby the default present as on date of receipt of section 8 notice could not become a cause of action to file this company petition, henceforth these petitions liable to be dismissed.

39. As to this argument of extinguishment of default, it is evident that default is in existence as on the date of issuing section 8 notice, ever since the corporate debtors received section 8 notice, they have made several times several promises that payments were likely to

happen. Now the point for discussion is as to whether such break-up of payments conveyed to Ericsson will amount to extinguishment of default occurred u/s 8 of the Code. Whenever any default in making payment happens, that default will become good only when payment has been made. It cannot be that if further assurance is given or schedule has been given assuring other side that payment would be made will never amount to making default good. This kind of concept has never been heard.

40. Moreover, in any event, it cannot become novation because novation means cancellation of the earlier contract and entering into new contract. Here the basic document for commencement of jural relationship is MSA, in that MSA itself there is a clause (24.1) saying that any alteration or modification to MSA will arise only when a new instrument has been entered into between the parties. Since no such instrument has been executed, it can never be called as novation. Moreover, mere assurance or promise of clearing liability by one party to other party can never become a novation, therefore, this novation argument propounded by the counsel of Corporate Debtors is no doubt novation but bereft of any merit. In view of the aforesaid reason, the default in making repayment has remained the same till date as before, therefore, this Bench hereby holds that Ericsson has proved that not only debt is in existence but also the default.

3. *Whether any dispute is in existence as on the date of receipt of section 8 notice by these Corporate Debtors*?

41. Since it is a point to be proved by the corporate debtors, I must say what argument the Counsel on behalf of the corporate debtors have canvassed to say that this case is hit by existence of dispute.

42. The Senior Counsel Mr U.K. Choudary appearing on behalf of RCom submits that this petition fails to set out the details of existing dispute between the parties because Reliance invoked arbitration clause by filing claim before Arbitral Tribunal on 01.11.2017, wherein on hearing the dispute raised by RCom, Ericsson itself having made a counter claim for this very claim mentioned in these cases, in this background, the Tribunal having held that parties are at dispute, it has to be construed that there is dispute in between the parties,

therefore even if dispute did not arise before receipt of section 8 notice, by virtue of ratio decided by Hon'ble Supreme Court in Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. 2017 **SCC** ONLINE. SC 1154, the dispute arose subsequent to filing of case u/s 9 of the Code has to be construed as dispute, in support of this argument, he relied upon paras of Mobilox Supra which are as follows:

> *"29. It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which "the existence of a dispute" alone is mentioned. Even otherwise, the word "and" occurring in Section 8(2)(a) must be read as "or" keeping in mind the legislative intent and the fact* ***that an anomalous situation would arise if it is not read as "or".*** *If read as "and", disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise.* ***This would lead to great hardship; in that a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an arbitral tribunal or a court. Further, given the fact that long limitation periods are allowed, where disputes may arise and do not reach an arbitral tribunal or a court for up to three years, such persons would be outside the purview of Section 8(2) leading to bankruptcy proceedings commencing against them.*** *Such an anomaly cannot possibly have been intended by the legislature nor has it so been intended.* ***We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties.***

In Re Morris Catering (Australia) Pty Ltd (1993) 11 ACSR 601 at 605, Thomas J said:

> *"There is little doubt that Div 3 is intended to be* ***a complete code which prescribes a formula that requires the court to assess the position between the parties,*** *and preserve demands where it can be seen that there is no genuine dispute and no* ***sufficient genuine offsetting claim.*** *That is not to say that the court will examine the merits or settle the dispute. The specified limits of the court's examination are the* ***ascertainment of whether there is a 'genuine dispute' and whether there is a 'genuine claim'.***

> ***It is often possible to discern the spurious, and to identify mere bluster or assertion.*** *But beyond a perception of genuineness (or the lack of it) the court has no function. It is not helpful to perceive that one party is more likely than the other to succeed, or that the eventual state of the account between the parties is more likely to be one result than another.*
>
> *The essential task is relatively simple - to identify the genuine level of a claim (not the likely result of it) and to identify the genuine levels of an offsetting claim (not the likely result of it)." In Scanhill Pty Ltd v Century 21 Australasia Pty Ltd (1993) 12 ACSR 341 at 357 Beazley J said: "... the test to be applied for the purposes of s 459H is whether the court is satisfied that there is a serious question to be tried that the applicant has an offsetting claim".*
>
> *In Chadwick Industries (South Coast) Pty Ltd v Condensing Vaporisers Pty Ltd (1994) 13 ACSR 37 at 39, Lockhart J said:*
>
> *"... what appears clearly enough from all the judgments is that a standard of satisfaction which a court requires is not a particularly high one. I am for present purposes content to adopt any of the standards that are referred to in the cases ... The highest of the thresholds is probably the test enunciated by Beazley J, though for myself I discern no inconsistency between that test and the statements in the other cases to which I have referred. However, the application of Beazley J's test will vary according to the circumstances of the case".*

43. To know what the ratio in the case supra is, we must recapitulate the historical facts and interpretation given by the Hon'ble Supreme Court, before looking into as to whether the case facts and legal proposition decided in the case are applicable to this case or not.

44. Mobilox is the first case on section 9 of IBC decided by Honourable Supreme Court and land mark judgement passed by Honourable Supreme Court for the reason that it has decided that to take in that the dispute shall have to be considered in existence if there is material reflecting that parties are at dispute over the claim even when suit or arbitration is not pending as on the date of receipt of notice by saying that the conjunctive ***"and"*** employed in between ***"the existence of a dispute, if any,"*** and ***"record of the pendency of the suit or arbitration proceeding"*** is to be read as ***"or"*** so as to include dispute in existence before receipt of the notice, no matter any suit or arbitration proceedings pending or not.

45. To know exactly what dispute was pending between Kirusa Software Pvt. Ltd and Mobilox Innovations Pvt. Ltd., we must know the material facts of that case as against the facts of the present case, so that it will become easy to come out of this artificially manifested riddle set out by the corporate debtors.

46. In Mobilox, the appellant (the corporate debtor) was engaged by Star TV for conducting tele-voting for the program of "Nach Baliye" program on Star TV, which in turn the corporate debtor subcontracted the work to the operational creditor by issuing purchase orders between October and December, 2013 in favour of the creditor. In the "Nach Baliye" program, the successful dancer was to be selected on various bases, including viewers' votes. For this purpose, the creditor was to provide toll free telephone numbers across India, through which, the viewers of the program could cast their votes in favour of one or more participants. For this purpose, software was customized by the creditor, who then coordinated the results and provided them to the debtor. Since the creditor obtained toll free numbers from telephone operators in terms of the purchase orders, the debtor was liable to make payment of rentals for the toll free numbers, as well as primary rate interface rental to the telecom operators. The creditor provided the requisite services and raised monthly invoices between December, 2013 and November, 2014 – the invoices were payable within 30 days from the date on which they were received. The creditor followed up with the debtor for payment of pending invoices through e-mails sent between April and October, 2014. **It is also important to note that a non-disclosure agreement (hereinafter referred to as the NDA)** was executed between the parties on 26thDecember, 2014 with effect from 1st November, 2013. More than a month after execution of the aforesaid agreement, the debtor, on 30thJanuary, 2015, wrote to the creditor that **they were withholding payments against invoices raised by the creditor, as the creditor had disclosed on their webpage that they had worked for the "Nach Baliye" program run by Star TV, and had thus breached the NDA.** The correspondence between the parties finally culminated into notice

dated 12thDecember, 2016 sent under Section 271 of the Companies Act, 2013 by Kirusa. Presumably because winding up on the ground of being unable to pay one's debts was no longer a ground to wind up a company under the said Act, **a demand notice dated 23rdDecember, 2016 was sent** for a total of ₹20,08,202.55 under **Section 8 of the new Insolvency and Bankruptcy Code, 2016** (hereinafter referred to as the Code). **By an e-mail dated 27thDecember, 2016, the appellant responded to the aforesaid notice stating that there exist serious and bona fide disputes between the parties,** that the notice issued was a pressure tactic, and that nothing was payable inasmuch as the respondent had been told way back on 30th January, 2015 that no amount will be paid to the respondent since it had breached the NDA. An application was then filed on 30th December, 2016 before NCLT Mumbai u/s 8 and 9 of IBC stating that an operational debt of ₹20,08,202.55 was owed to the respondent (Kirusa). On 27th January, 2017, this Tribunal dismissed the aforesaid application in the following terms:

"On perusal of this notice dated 27.12.2016 disputing the debt allegedly owed to the petitioner, this Bench, looking at the Corporate Debtor disputing the claim raised by the Petitioner in this CP, hereby holds that the default payment being disputed by the Corporate Debtor, for the petitioner has admitted that the notice of dispute dated 27thDecember 2016 has been received by the operational creditor, the claim made by the Petitioner is hit by Section (9)(5)(ii)(d) of The Insolvency and Bankruptcy Code, hence this Petition is hereby rejected."

On which, the Honorable National Company Law Appellate Tribunal decided the appeal on 24th May 2017, which is as follows:

"39. In the present case, the adjudicating authority has acted mechanically and rejected the application under sub-section (5) (ii) (d) of Section 9 without examining and discussing the aforesaid issue. If the adjudicating authority would have noticed the provisions as discussed above and what constitutes 'dispute' in relation to services provided by operational creditors then it would have come to a conclusion that condition of demand notice under sub-section (2) of Section 8 has not been fulfilled by the corporate debtor and the defense claiming dispute was not only vague, got up and motivated to evade the liability.

40. For the reasons aforesaid we set aside the impugned order dated 27.1.2017 passed by adjudicating authority in CP No.01/I &BP/NCLT/MAH/2017 and remit the case to adjudicating authority for consideration of the application of the appellant for admission if the application is otherwise complete.

41. The appeal is allowed with the aforesaid observations. However, in the facts and circumstances there shall be no order as to cost."

47. In this back drop, the Hon'ble Supreme Court sorted out the issue as to whether pendency of suit or arbitration is essential to decide that dispute is in existence by interpreting that the word "and" reflecting in section 8 (2) (a) of the Code has to be read as "or", so that even if suit or arbitration not pending, if at all dispute is already in existence as on the date of receipt of section 8 notice, then it has to be treated as pre-existing dispute as on the date of receipt of section 8 notice.

48. The reason for saying so in Mobilox is that when the NCLT decided Mobilox, it has taken into consideration the pre-existing dispute as a reason for dismissal of the case because in the month of January 2015 itself Mobilox sent e-mail to Kirusa stating that Kirusa violated Non-Disclosure Agreement (NDA) entered in between Kirusa and Mobilox by saying that Kirusa put it in its website stating that it was working for Star TV, when this decision was assailed before Hon'ble NCLAT, the order of NCLT was reversed stating that the dispute raised by Mobilox is vague, got up and motivated to evade the liability. On that observation, the Hon'ble Supreme Court held that the correspondence between the parties would show that on 30.01.2015, Mobilox clearly informed Kirusa that it had displayed Mobilox confidential client information and claimed campaign to itself on a public platform (website) which constituted breach of trust and breach of the NDA between the parties, for this reason, that all the amounts that were due to Kirusa were withheld till the time the matter resolved, on which on 10.02.2015, Kirusa responded denying breach of NDA dated 26.12.2014, saying so, Kirusa demanded Mobilox to pay a sum of ₹19,08,202.57, to which again, Mobilox replied on 26.02.2015 expressing that it had lost business from various clients as a result of Kirusa breaches. Thereafter Kirusa remained silent for some time. And then Kirusa having wished to revive business relation with Mobilox, it sent an email on 26.06.2016 stating that to finalize the time and place for a meeting, it would like to follow up payment which is long stuck up. On 28.6.2016, Mobilox wrote to Kirusa again to finalize time and place, thereafter when no

response came to the aforesaid email, Mobilox then fired the last shot on 19.09.2016 reiterating that no payments are due as the NDA was breached.

49. Soon after giving all this factual matrix, the Hon'ble Supreme Court has gone ahead saying that the demand notice sent by Kirusa was disputed in detail by Mobilox in its reply dated 27.12.2016 setting out the details of the email dated 30.01.2015.

50. The Hon'ble Supreme Court has not decided Mobilox case on the ground that operational debt is not on equal footing to the financial debt, the ground for upholding the order of NCLT is that the corporate debtor disputed Kirusa putting out in its website that it has been working for Star TV way back in the month of January 2015, ever since the said dispute was brewing in between the parties by shooting emails against each other, it is not that Mobilox was for the first time mentioned in its reply notice to section 8 notice that Kirusa violated NDA, by the time Mobilox received notice dispute was already in existence, the same has been reiterated in the reply to the section 8 notice.

51. The logic taken by Hon'ble Supreme Court in deciding Mobilox is the existence of dispute related back to 30.01.2015. It is not out of context to mention here that filing a suit is only seeking a remedy for a dispute already in existence, what dispute means is only a disagreement between two parties in respect to an understanding; suit or arbitration proceeding is a sequel to the dispute already raised. That disagreement could be called as dispute only when a party aggrieved or felt aggrieved and communicated the same to other party. Such communication is called raising dispute. Date of dispute is cause of action for filing suit. Filing of suit or arbitration is not cause of action. Here in Mobilox, it communicated such disagreement on 30.01.2015 itself that is almost two years before filing case under IBC. Ever since lot of correspondence happened between the parties with respect to the dispute saying that Mobilox would not pay for having disclosed information not supposed to

disclose under NDA therefore not liable to pay to the invoices raised by Kirusa.

52. But that is not the case here, Reliance right from the beginning, never raised any dispute, not even communicated that they have some difficulty in the services rendered by Ericsson, all through what Reliance continuously saying is that it would pay money at times on weekly basis, at times on monthly basis, sometimes saying that they would pay money in advance simultaneously assuring to clear the backlog of arrears, which is a diagonally opposite to the factual matrix of Mobilox. Did Reliance ever raise at any point of time that there is a dispute with Ericsson in respect to the claim Ericsson raised? No.

53. Therefore, the ratio decidendi in Mobilox is based on the above factual matrix, that is about dismissing section 9 petition based on a dispute Mobilox raised under section 5 (6) (c) of IBC almost two years before giving notice under section 8 of IBC, when Honorable NCLAT not accepted NCLT on the ground suit or arbitration not pending as on the date of receipt of section 8 notice, not on the ground operational debt is not on par with financial debt. No doubt, it is to be agreed that a sentence has been there in that judgment stating that "*we have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than the financial debts, does not enable the operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous consideration, it is for this reason that it is enough that a dispute exists between the parties*". With all humility I have to say that this sentence has no bearing on the issue decided by the Hon'ble Supreme Court, therefore, at the outset I would say that it is not the ratio decidendi to be followed from Mobilox. The only point decided in Mobilox is the disjunctive word "and" is to be read as conjunctive "or". It has been replaced with the word "or" so as to say that if any pre-existing dispute is there even if suit or arbitration proceeding is not pending then also it could be taken as a ground for dismissal of section 9 petition. A sentence from any context should not be taken out and given an isolated reading making remaining text irrelevant.

With all responsibility I state that obiter will not prevail over the statutory provisions, as to operational debt claims, in water fall mechanism it is shown its place, but when it comes to admission of a case under section 9, no step motherly treatment, all, financial creditors as well as operational creditors, are entitled to file cases and they ought to be admitted if petitions are complete as envisaged under section 8 and 9 of the Code.

54. As to obiter, for the corporate debtor counsel tried to impress upon this Bench relying on the aforesaid point, it is relied upon the judgements of this Hon'ble Supreme Court on obiter, which is as follows in State of Haryana v. Ranbir, (2006) 5 SCC 167:

"A decision, it is well settled, is an authority for what it decides and not what can logically be deduced there from. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. See ***ADM, Jabalpur v. ShivakantShukla*** (1976) 2 SCC 521). ***It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. (See Divisional Controller, KSRTC v. Mahadeva Shetty*** **(2003 (7) SCC 197)"**

55. In Girnar Traders v. State of Maharashtra, (2007) 7 SCC 555, Honourable Supreme Court held:

"Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents."

56. I don't even say that Hon'ble Supreme Court has stated that simply it being an operational debt, even if a contention of dispute is raised at any point of time, qua being mentioned, section 9 petition is to be dismissed. If that is the case, Hon'ble Supreme Court would not have further discussed over this aspect in section 45 and 46 as below:

"45. Going by the aforesaid test of "existence of a dispute", it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defence is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability.

46. Learned counsel for the respondent, however, argued that the breach of the NDA is a claim for unliquidated damages which does not become crystallized until legal proceedings are filed, and none have been filed so far. The period of limitation for filing such proceedings has admittedly not yet elapsed.

Further, the appellant has withheld amounts that were due to the respondent under the NDA till the matter is resolved.

Admittedly, the matter has never been resolved. Also, the respondent itself has not commenced any legal proceedings after the e-mail dated 30th January, 2015 except for the present insolvency application, which was filed almost 2 years after the said e-mail. All these circumstances go to show that it is right to have the matter tried out in the present case before the axe falls".

57. By looking into these two paras, it could be easily ascertainable that in para 29 of Mobilox, it has been stated that simply not filing suit or arbitration cannot be construed as dispute is not in existence, because aggrieved is at liberty to initiate suit or arbitration at any point of time within prescribed limitation, the only point to be ascertained is as to whether the dispute has been raised before receipt of section 8 notice or not, as to mandate of raising dispute before receipt of section 8 notice has not been interpreted nor modified. Reply to section 8 notice in 10 days after receipt of section 8 notice is only a caveat to say that already dispute is in existence, how that could be ascertained is, by referring earlier correspondence or action taken by corporate debtor against operational creditor. In the paras above referred from Mobilox is an indication to say even when such preexisting dispute is shown as in existence, it has been said that it should not be feeble and it should be plausible. Hon'ble Supreme Court has held that **defense shall not be spurious, mere bluster, plainly frivolous or vexatious, a dispute shall truly exist in between the parties, which may or may not ultimately succeed.** Here in this case what dispute is pending in respect to the claim, nothing.

58. As I have already mentioned that Reliance invoking arbitration assailing the termination notice is altogether different from the admitted claim upon which Ericsson initiated IBC proceedings. If at all it has to be assumed as dispute between the parties, it would become a dispute

over the termination of MSA, not in respect to the money claim raised by Ericsson, which I should not forget to say that the claims in the petitions are time and again admitted by Reliance.

59. For the sake of completeness, if you see the definition of dispute u/s 5(6), it is not that whatever that is disagreed between the parties will amount to dispute, it will amount to dispute only when it falls within the three categories mentioned u/s 5(6) of the definition that is as follows:

"5(6) "dispute" includes a suit or arbitration proceedings relating to -

(a) The existence of the amount of debt;
(b) The quality of goods or service; or
(c) The breach of a representation or warranty;"

60. As to (a) that is the category of the existence of dispute in respect to amount of debt, it is very clear Reliance itself said so and so amount is due and outstanding, without seeking verification or saying a word against it, Ericsson made claim basing on the confirmation given by Reliance on 28.04.2017 to the balance outstanding as on 31.03.2017, therefore no dispute over claim amount, hence it will not fall under clause (a). If we come to second clause i.e. the quality of goods or services, it has nowhere been mentioned at any point of time from 25.01.2013 till date that the services provided by Ericsson are of inferior quality or not up to the mark as mentioned in the MSA entered in between them, therefore no dispute could be said as falling under this clause as well.

61. The next clause that is taken as trump card for their argument is the breach of representation or warranty, this termination notice was given by Ericsson on 07.09.2017 i.e. far after Reliance gave reply to section 8 notice stating that they would make arrangement for making payment with several break-up liquidation charts, so it is clear that till the date termination notice was given to Reliance, at least for the sake of assumption, there was no breach, no violation of warranty. In fact, ex facie it appears that Reliance failed to adhere to the terms and conditions entered in between Ericsson and Reliance by failing to make payment amounting to approx. ₹1,000crores. It is

not an agreement to leave it like that, because under the agreement, the MSP shall provide services as long as agreement is in existence, if that is so, Ericsson is liable to incur expenses for maintaining managed services. Will any prudent man continue rendering services by incurring losses when it is for sure that he would not be getting his dues and when the person receiving services flouting their assurances one after another?

62. Let us take a hypothetical situation, Ericsson has not issued termination notice before filing this case, in case this case is admitted immediately after filing it, would Ericsson be in a position to withdraw its services after moratorium is declared, if that is the case, it would become double whammy to Ericsson, from one side, it would not get its dues, from other side it has to infuse crores of rupees to provide managed services to Reliance. Will anybody become so insane not to terminate services before filing this case? In fact, if any such thing happened, it is nothing but inviting suicidal effect to Ericsson. Therefore, termination notice is no way connected either to the claim made by Ericsson or any way connected to relate back termination notice as dispute to the claim already admitted by Reliance.

63. The Corporate Debtors' counsel has vehemently argued that in the order passed by Arbitral Tribunal mentioned that dispute has been in existence in between Ericsson and Reliance by referring to various paras wherever Arbitral Tribunal has mentioned the word dispute, to understand it, it is essential to visit the order passed by Arbitral Tribunal saying as to whether Arbitral Tribunal anywhere held or said that the claim made by Ericsson is in dispute between Reliance and Ericsson.

64. In para No. 14 of the order of the Arbitral Tribunal, it has been clearly mentioned that refusal to pay admitted debt and challenge to the remnant claim or the claims which would squarely constitute a dispute liable to be referred to arbitration. It has been said that the claims filed by the respondents have not been admitted in their entirety but it has not been said anywhere that debt has not been

admitted by Reliance indeed if the order is read in its entirety, it is very much clear that the admitted debt refers to the claim mentioned in the IBC petitions. In any event, this proceeding will not have any bearing on IBC to say that dispute is in existence; because this is a proceeding invoked by Reliance on 01.11.2017 i.e. subsequent to filing IBC proceedings, disputing the termination notice. It is not even the case of Reliance the claim in the IBC has been disputed before Arbitral Tribunal. It is often being said by Reliance counsel that Arbitral Tribunal has mentioned that there is dispute between Reliance and Ericsson without looking into its entirety to find out as to whether this Reliance raised any dispute in respect to this claim as mentioned u/s 5(6) of the Code.

65. When we read section 5(6) it speaks only about disputes, as to understand existence of such disputes, it is imperative to read section 8 of the Code, which is as follows:

> "8. Insolvency resolution by operational creditor – (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.
>
> (2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor –
>
> (a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
>
> (b) the repayment of unpaid operational debt –
>
> (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
>
> (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.
>
> Explanation:- For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred".

66. Soon after ascertaining whether there is a dispute as mentioned under section 5(6) of the Code, the next test that is to be applied is to ascertain as to whether such dispute is in existence as mentioned u/s 8(2)(a) of IBC. By reading section 8(2), it has to be seen whether there is a dispute in existence before receipt of section

8 notice or not, here timeline is important, if that cutoff line of the receipt of notice is not there, anybody and everybody will raise a dispute saying that reply has been given saying that dispute is in existence, yes, the corporate debtor is at liberty to say that dispute is in existence but such assertion must relate back to the date before receipt of notice, then only it will become existence of dispute, if that cutoff date has no sense and not considered as mandatory then over a period of time, no operational creditor can raise any claim under section 8 and 9 of this code, indeed these two sections will become redundant. So, now what is the dispute Reliance rising? They say that termination notice has been given therefore, dispute is in existence, can it be considered as dispute under section 5(6) or can it be a dispute in existence u/s 8(2)(a)? However, as I said earlier, it is not at all dispute in relation to the claim, at the most if at all it is a dispute, it will become a dispute in respect to termination of notice to MSA. Even in that notice also, it has been categorically mentioned that the notice has been given under clause 23.5.1 of MSA giving 30-days' notice for termination as envisaged under the MSA, upon which both the parties all along relied upon. Therefore, for any reason, Reliance simply saying that "Ericsson's managed services performance has been inconsistent and there is significant scope for improvement" will not amount to a dispute and it pales into insignificance, this sentence, instead of reading it by taking it out of the context reading it, if it is read it in entirety, the letter dated 19.05.2017 is nothing but an appeal to Ericsson to remain waiting for further time for receipt of their money.

67. For the reasons afore stated that there is no dispute in existence in respect to the claim Ericsson raised, on the top of it, the facts upon which the ratio held in Mobilox is no way applicable to the facts of this case henceforth, this bench hereby holds that no dispute has arisen at any point of time by Reliance nor is any dispute in existence at any point of time.

68. At the cost of repetition, let us revisit the facts relevant to this argument, the counsel says for an Arbitration dispute has arisen

subsequent to filing of the case, therefore, he says dispute is in existence but by seeing the facts in existence this argument is neither factually correct nor legally tenable. Indeed, the cause of action for raising dispute before Arbitral Tribunal is not in respect to the claim mentioned in these cases it is on termination of MSA in between the parties. Here, there are two issues, one is the claim made by the Ericsson against the corporate debtors, another is a dispute before Arbitral Tribunal in respect to termination of MSA. Termination of MSA is subsequent to receipt of section 8 notice, the cause of action for filing Insolvency & Bankruptcy cases and the cause of action for invoking arbitration are distinct and separate, the corporate debtor counsel has tried to impress upon this Bench the cause of action for these two disputes are one and the same. Factually it is incorrect because these corporate debtors have never ever disputed the claim made by Ericsson, the only grievance of the corporate debtors is the termination notice given by Ericsson to these corporate debtors saying that Ericsson would not be in a position to further provide any services to the corporate debtors under the MSA because the corporate debtors continuously failed to pay for the services rendered by Ericsson.

4. Whether the petitions filed under section 9 are complete as envisaged under section 9 of IBC or not?

69. The essential requisite to get the completeness to a petition moved u/s 9 is that a petition u/s 9 is to be filed after expiry of 10 days from the date of delivery of notice and the operational creditor should not have received payment from the corporate debtors or notice of dispute u/s 2 of section 8. These are the two essential requisite to file petition u/s 9 of the code.

70. In the present case, Ericsson gave notice on 07.05.2017, company petitions u/s 9 was filed on 11.09.2017, so the petition has been filed after clear 10 days from the date of delivery of the notice, therefore this condition is fulfilled, as to second condition is concerned, Ericsson has not received payments towards claim

amounts from the corporate debtors until before filing of these Company Petitions, of course, till date payment has not been received to the satisfaction of the claim amounts, and not even a notice putting it to Ericsson mentioning that a dispute is in existence in respect to this claim amount before receipt of notice u/s 8, in all respects the petitioner is entitled to file petitions, therefore it has filed petitions. Moreover, Ericsson has filed this application in the form as prescribed under Adjudicating Authority Rules by filling all the columns as prescribed in the said form, when it comes to sub section 3 of section 9, Ericsson filed invoices along with rejoinder, the requisite of filing invoices normally will arise to prove that the said money demanded is to be paid by the corporate debtors, this requisite will become essential so long as the corporate debtors have not admitted the claims mentioned in the petitions. Here in fact the corporate debtors themselves confirmed the claim amount taking out from their books as on 31.03.2017. In a scenario like this, filing or non-filing of invoices will become irrelevant because the claims have been categorically admitted by Reliance. It is not the case of Ericsson that seeking confirmation to the claim amount has not been given by Reliance, it is not the case of Reliance that these claims not payable to Ericsson, it is also not the case of Reliance that these claims are not in default, when the claim is admitted and there has been no denial to that aspect by the answering party i.e. the corporate debtors here, there is no need to go into whether all invoices have been filed or not, however, Ericsson has annexed all these computerised invoice entries sent by Reliance along with the rejoinder. In addition to it, since the petitioner is entitled either to file invoices or to file section 8 notice delivered to the corporate debtors, since it is not the case of the Reliance section 8 notice has not been delivered and such notice as well as reply sent by Reliance has been annexed to this petitions, first requisite under sub section 3 (a) is construed as fulfilled. As to sub section (b) is concerned, for the reply has been given to section 8 notice by the corporate debtors, question of filing an affidavit by the petitioner will not arise. As to section 3 (c) of section 9 is concerned, Ericsson has filed the certificate issued by HDFC bank as well as Citi bank certifying that

Reliance has not credited the claim amount in the bank accounts. Since whatever information required u/s 9 (3) being given and having this Bench noticed that applications made under section 9 are complete, no payments have been made to satisfy the operational debts, notice for payment to the corporate debtors being delivered to the corporate debtors and no notice disputing the claim has been received by the operational creditor as envisaged under Insolvency & Bankruptcy Code or even according to the ratio decided by Hon'ble Supreme Court in Mobilox, this Bench hereby holds that section 9 petitions in all respects are complete and fit for admission.

71. It is hereby noticed that as to the allegation that Reliance made some payments subsequent to issual of notice u/s 8 of the Code, the Petitioners has clarified in their rejoinder as to how those payments have been adjusted by the Corporate Debtors themselves to the payables arose subsequent to sending notice u/s 8, however, admission of this case is not an order equivalent to decree determining the debt payable by the Corporate Debtors, in this peculiar situation, if for any reason subsequent payments made by Corporate Debtors are not properly accounted, these Corporate Debtors can very much raise this point before the IRP, therefore we have not found any merit in the argument saying that since some paltry amount paid by the Corporate Debtors not accounted for cannot become reason for dismissal of these Company Petitions, however, Ericsson has dealt with each of the payments saying that has been adjusted by the Corporate Debtors themselves, therefore we have not found any merit in this argument.

5. *Whether SBI/Financial Creditors have any locus to file an application before this Bench, if so, whether any merit is there as against the petition filed under IBC.*

72. Sr. Counsel Mr. Devitre appeared on behalf of consortium of banks led by SBI submits that these petitions should not be admitted because the consortium of banks constituted into JLF in June 2017 in accordance with the guidelines of RBI and as a corrective action plan and it has accepted the proposal of RCom consolidated to opt for an

asset monetisation plan and the asset monetisation process was carried under the supervision of an independent high powered bid evaluation committee for debt restructuring by way of an asset monetisation plan for selling the assets of RCom group to RJio, so that these secured financial creditors i.e. banks would at least recover more than ₹28,000 crores through asset monetisation of RCom group (all 3 Corporate Debtors). The difficulty the counsel raised in this case is, since it is specialized commodity, if at all this transaction is not through, the financial creditors will not be in a position to realize to the extent of ₹28000 crores which is more than half of the liability exposure of ₹45,000 crores of these group companies. The counsel further submits all these assets are already been mortgaged to these financial creditors, even if these petitions are admitted, this operational creditor will not get any money against its claim of around ₹1,000crores, therefore, this proceeding is a malafide to jeopardise the asset monetisation process initiated by the JLF.

73. To which, the Sr. Counsel Mr. Modi appeared on behalf of Ericsson has stated that the claim of Ericsson against Reliance is about ₹1000 crores, whatever profit these corporate debtors earning until before termination were only because of the managed services provided by Ericsson. In fact, this telecommunication service was run by Reliance for these three years is on the managed services provided by Ericsson. On the allegation that one of the Sr. Counsel namely Mr. Joshi made against Ericsson stating that Ericsson fraudulently raised this litigation against Reliance, this Counsel stated as to whether Ericsson has filed a petition that is not permitted under law, has it raised any claim that is denied by the Corporate Debtors, he also questioned, has Reliance ever disputed the due outstanding payable by Corporate Debtors at any point of time.

74. The counsel of Ericsson says that Mr. Joshi, senior counsel on Corporate Debtors behalf ought not to have made an allegation that Ericsson has filed these cases with a fraudulent intention. He says that like all other financial creditors putting their efforts to realise their monies, Ericsson has also put forward its claim under IBC so as

to realise its amount, it is not doing anything not permitted under law, it is not doing anything to get unlawful gain from anybody, he says as financial creditor has right to make their claim, Ericsson also trying to realise their claim from Reliance. Whether it comes or not, it is not to be decided by this applicant i.e. SBI, neither these Corporate Debtors, therefore this applicant has no right to deprive Ericsson from pursuing legal remedy as envisaged under law.

75. It is time and again said by various NCLT Benches and by Hon'ble NCLAT saying that JLF proceeding will not have any bearing on IBC proceedings, in fact, in Innoventive Industries Ltd. v. ICICI Bank case ((2018) 1SCC 407) also there was a contention that JLF proceedings pending, likewise in many cases. When it cannot become a contention and when such a plea cannot have any bearing in other cases, how could it become a defence in this case to say that these petitions shall not be admitted because some monetisation process under the supervision of JLF is pending. It need not be said separately that what is sauce for the Goose will become sauce for Gander. In view of this reason, this Bench cannot take any different or innovative approach different from the line that has been followed by Honourable NCLAT and all NCLT Benches.

76. Apart from this, this counsel has raised another contention that Hon'ble Supreme Court has set aside the interim order passed by Arbitral Tribunal and order affirmed by the Hon'ble High Court of Bombay stating that the restraint order passed by the Tribunal being in deprivation of the right of the secured creditors, in view of the same Hon'ble Supreme Court, cautiously dealt with this case stating that the secured creditors are at liberty to proceed in accordance with law by making it clear that the order passed by the Hon'ble Supreme Court is not prejudicial to the rights of any of the parties. On this point, it is very clear that if at all secured creditors want to proceed in accordance with law either by initiation of SARFAESI proceedings or by IBC proceeding, they are at liberty to proceed, but having monetisation process through JLF is not binding upon the persons other than members of JLF. Moreover, it is an out and out sale by RCom and its group companies to RJio by bidding or may be by a

sale, but what right this applicant has to say that no orders should be passed on the Company Petitions filed by Ericsson i.e. Operational Creditor. When it has been envisaged in the Code as well as held by Hon'ble NCLAT and Hon'ble Supreme Court stating that the non-obstante clause present in section 238 of the Code governs all other proceedings which are inconsistent with the proceedings pending under IBC. IBC does not say whether the Corporate Debtors have ability to pay or not to pay, it is not mentioned anywhere to examine as to whether the petitioner has malafide intention to proceed against the Corporate Debtors, the only requisite is debt must be there, default must be there, dispute in existence should not be there. If all these three are complied with, this Bench ought to admit these Company Petitions.

77. Therefore, we have not noticed any merit in the application moved by SBI, as to the order of Hon'ble Supreme Court, SBI is only given liberty to proceed in accordance with law, not to obstruct the proceeding initiated in accordance with law. Henceforth, the contention of this counsel on behalf of this applicant is bereft of any merit; therefore, this application is hereby dismissed without cost.

78. For having this Bench has noticed that the petitioner proved existence of debt and default, we are of the considered view that these petitions are fit for admission.

79. Accordingly, these Company Petitions are hereby **admitted**.

80. For there being separate Company Petitions against each of these companies, separate reliefs have been granted which are as follows:

CP 1385/2017:

i) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or

beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

iv) That the order of moratorium shall have effect from **15.05.2018** till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

vi) That this Bench will appoint Interim Resolution Professional after having taken confirmation from Resolution Professionals intended to be appointed by this Bench.

CP 1386/2017:

i) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or

enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

iv) That the order of moratorium shall have effect from **15.05.2018** till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

vi) That this Bench will appoint Interim Resolution Professional after having taken confirmation from Resolution Professionals intended to be appointed by this Bench.

CP 1387/2017:

i) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in

respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

vi) That this Bench will appoint Interim Resolution Professional after having taken confirmation from Resolution Professionals intended to be appointed by this Bench.

81. The Registry is hereby directed to communicate this order to the Operational Creditor and the Corporate Debtors.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-

B.S.V. PRAKASH KUMAR
MEMBER (JUDICIAL)