THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA (COMPANIES.ACT)/770 (MB) 2021 IN CP/3025 (MB) 2019

under Section 66 & 67 of the Insolvency and Bankruptcy Code, 2016.

Anish Niranjan Nanavaty
(Resolution Professional of Reliance Communications Infrastructure Limited)

...**Applicant**

V/s

Netizen Engineering Pvt. Ltd.

…**Respondent**

In the matter of
COMPANY PETITION (IB) NO. 3025 OF 2019

State Bank of India

…Petitioner

V/s

Reliance Communications Infrastructure Limited.

…Corporate Debtor

Order delivered on: 15.07.2026

***Coram**:*

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Adv. Anushka Bharadwaj, Adv. Rishabh Jaisani and Adv. Kriti Kalyani.
For the Respondents	:	Adv. Rohit Gupta a/w Adv. Bhakti Chandan and Adv. Ayaan Zariwala

ORDER

1. This Application IA 770/2021 is filed on 18.3.2021 by Mr. Anish Niranjan Nanavaty ("Applicant/RP"), the Resolution Professional of Reliance Communications Infrastructure Limited ("Corporate Debtor/RCIL") in the Corporate Insolvency Resolution Process ("CIRP"), under Section 66 of the Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs:-

   a) *Order and declare that the Impugned Transaction I, whereby Asset which was purchased by NEPL for INR 3034.50 crores was sold on the same day to the Corporate Debtor by NEPL at INR 3037.20 crores i.e. at an excess of INR 2.70 crores to the Corporate Debtor, constitutes a fraudulent transaction under Section 66 of the Code and grant consequential relief;*

   b) *Order and declare that the Impugned Transaction II, whereby receivables worth INR 2526.58 due from NEPL were written-off and provided for by the Corporate Debtor, constitutes a fraudulent transaction under Section 66 of the Code and grant consequential relief;*

   c) *Grant any other relief, including under Sections 66 and 67 of the Code, that this Hon'ble Tribunal may deem fit.*

2. The Applicant had, initially, filed present application arraying M/s Netizen Engineering Pvt. Ltd. ("Respondent No. 1/NEPL") only. Thereafter, pursuant to liberty granted vide order dated 1.10.2025, the Applicant arrayed the suspended board members of the corporate debtor as Respondents, namely, Mr. Suresh Ranagachar as Respondent No. 2, Mr. Shrenikbhai Vaishnav Rameshchandra as Respondent No. 3, Mr. Gautam Bhailal Doshi as Respondent No. 4, Ms. Grace Thomas as Respondent No. 5, Mr. Dagdulal Kasturchand Jain as Respondent No. 6, Mr. Sanjeev Modi as Respondent No. 7, Mr. Rajesh Prabhakar Raktate as Respondent No. 8, and Mr. Parthiv Vinayakant Parekh as Respondent No. 9. The copy of amended Application was served on all respondents, and they filed their replies.

3. This Tribunal, vide order dated 25.09.2019, admitted Company Petition (IB) No. 3025 of 2019 filed by State Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor and the Applicant herein was appointed as the Interim Resolution Professional. Subsequently, on 22.10.2019, the Committee of Creditors of the Corporate Debtor resolved to appoint the Applicant herein, as the Resolution Professional of the Corporate Debtor.

4. The Applicant appointed auditors M/s Batliboi and Purohit, Chartered Accountants to conduct a transaction audit of the Corporate Debtor as per the provisions of the Insolvency and Bankruptcy Code, 2016. Pursuant thereto, the auditors submitted an addendum report dated 18.02.2021 to the audit report dated 24.09.2020, identifying purchase of Optical Fibre Cable Right of Way by the Corporate Debtor herein from NEPL at an inflated value, and provisioning of/writing off of certain capital advances to and other receivables from NEPL from the books of account of the Corporate Debtor as a fraudulent transaction in terms of section 66 of the Insolvency and Bankruptcy Code, 2016.

5. The Resolution Plan, in the matter of Corporate Debtor, was approved by CoC on 30.08.2021 and thereafter by this Tribunal vide order dated 19.12.2023. Clause 3.7.4 of the approved resolution plan contemplates, inter alia, that in the event any transaction is avoided/ set aside by this Tribunal in terms of Section 43, 45, 47, 49, 50 or 66 of the Insolvency Code and any amount received by the RP or the Corporate Debtor in furtherance thereof, whether prior or post the approval of the resolution plan by the Tribunal or after effective date (as defined under the approved resolution plan) shall be solely for the benefit of the financial creditors of Corporate Debtor. In the meeting of the monitoring committee on 10th February, 2024, the members of the monitoring committee authorized the applicant herein "to issue power of attorney, vakalatnama and / or such other authorisations to the authorized persons for representation in connection with the ongoing disputes / litigations of RCIL (including avoidance application) ".

6. The Applicant has stated that he has analysed the transactions and has determined that the same would tantamount to a fraudulent transaction under Section 66 of the Code as the Impugned Transactions have been undertaken by the Respondent in connivance with parties which are either related or potentially related parties to the Corporate Debtor and the effect of such transaction has been an increase in the liability of the Corporate Debtor, detrimental to the interests of the bonafide creditors of the Corporate Debtor.

7. The Applicant has quoted the relevant portions of the Auditor’s Report, which reads as under –

"1) By way of this transaction RCIL's liability is increased towards R.Com & RITL. As explained by Management these capital advances were given by R.Com & RITL to NEPL during January 2016. Also, we have not been provided any specific explanation by the management of RCIL why the assignment of balances are much higher than the value

of assets. Further, there exists a significant doubt over recoverability of these amount and we were not provided with any follow up communications or any legal proceeding initiated by RCIL against NEPL for recovering the amounts; hence this transaction to the extent of Rs.2526.58 crore have been considered as a fraudulent transaction under section 66 of the IBC 2016.

2) Further, OFC ROW was sold to RCIL by NEPL at Rs.3037.30 crores but at the same time it was purchased by NEPL at Rs.3034.50 crores, which leads to reduction in capital advance balance receivable from NEPL by INR 2.70 crores. However, we have not been provided any specific explanation by management of RCIL for buying the assets at inflated price of INR 2.7 crores. Hence this transaction to the extent of Rs.2.70 crores has been considered as fraudulent transaction under section 66 of the IBC 2016."

8. The following transactions are impugned in the present application as fraudulent in terms of Section 66 of IBC :

(i) the purchase of Optical Fibre Cable Right of Way on back to back basis for a consideration of Rs. 3037.20 crores by the Corporate Debtor herein from NEPL, which was purchased by NEPL from M/s MP Network Pvt. Ltd. for a consideration of Rs. 3034.50 crores on the same date i.e. 28.5.20217 thus causing loss of Rs.2.70 crores to the Corporate Debtor; and

(ii) The capital advances, aggregating to Rs. 4,930.16 crores paid earlier (January, 2016) against work orders totaling to INR 5,128 crores to NEPL by Reliance Communications Limited ("RCOM") and Reliance Infratel Limited ("RITL"), were assigned to the Corporate Debtor by RCOM and RITL on 28.5.2017. Besides this, there was an assignment of receivables from NEPL aggregating to Rs. 614.22 crores by other entities namely, RTSL, RBTV, RHRS, RIDC, RRL and RWSL in favor of Corporate Debtor in FY 2017-18. The Corporate Debtor after adjusting the consideration of Rs. 3034.50 payable to NEPL for purchase of Optical Fibre Cable Right of Way as well as Rs. 28.53 crores receivable from NEPL as on 1.4.2017, the Corporate Debtor had written off a sum of Rs. 255.02 crores in FY 2017-18 and provided a sum of Rs. 2271.56 Crores as Impairment loss in FY 2018-19.

9. Heard the Counsel and perused the material on record.

10. Indubitably, the consideration for purchase of Optical Fibre Cable Right of Way by the Corporate Debtor payable to NEPL was discharged from the receivables from NEPL assigned in favor of the Corporate Debtor. The Applicant's contention is mainly founded on following propositions :

    i. The purchase of Optical Fibre Cable Right of Way by the Corporate Debtor was on back to back basis on 28.5.2017 from NEPL for consideration higher by Rs. 2.70 crores, as paid by NEPL to M. P. Network Ltd. on the same date, thus causing loss to the corporate debtor;

    ii. The Optical Fibre Cable Right of Way was disclosed as "Assets held for sale" in FY 2017-18, and loss of Rs. 1,000/- crores was booked towards impairment therein;

    iii. The amounts receivable from NEPL, pursuant to assignment of receivable from NEPL by assignor group companies, were written off or provided as impairment in books of corporate debtor after adjusting the consideration payable for purchase Optical Fibre Cable Right of Way.

11. The Applicant has placed on record a tabulation of transactions in the ledger account of NEPL as appearing in books of accounts of the Corporate Debtor in FY 2017-18 and FY 2018-19, which shows a sum of Rs. 5.00 crores receivable from NEPL as on 31.3.2019 and a sum of Rs. 28.53 crores receivable as on 1.4.2017. Accordingly, the receivables from NEPL has reduced by a sum of Rs. 23.53 crores pursuant to the alleged adjustments.

12. It is noted from the tabulation at para 7.k of the application, it emerges that NEPL's account was debited by aggregate sum of Rs. 5,544.60 crores on account of receivables from NEPL by Rcom, RITL and other group companies, and as against this, Rs. 3,037.20 crores are credited on account of purchase consideration for Optical Fibre Cable Right of Way, Rs. 255.02 crores on account of write off in FY 2017-18, and Rs. 2,271.56 crores on account of impairment in advances in FY 2018-19, aggregating together to Rs. 5,563,78 crores. Accordingly, these alleged adjustments, which are impugned as fraudulent in the present application, had the effect of reducing Rs. 19.18 crores from the amount receivables from NEPL as on 1.4.2017, prior to transactions impugned as fraudulent in the present application.

13. It is further noted that a sum of Rs. 2,271.56 crores was credited on account of impairment of advances receivable from NEPL in FY 2018-19, which is merely an accounting provision mandated by the appliable Accounting Standards requiring a reporting entity to provide for loss in an asset based on fair value estimate of such asset. Such impairment does not take away right of a debtor to recover the amounts, so impaired in the books of Debtor, from the creditors.

14. It is pertinent to note the decision in case of ***Renuka Devi Rangaswamy vs Mr. Madhusudan Khemka (NCLAT Chennai), (2023) ibclaw.in 384 NCLAT*** laying out necessary ingredients for impugning a transaction in terms of Section 66 of the Code. The relevant part of said decision reads as follows :

*"**33.** To be noted that, the expression `Party to the carrying on business', indicates `taking positive steps', in carrying on `company's business', in a `fraudulent manner'. The intent to `defraud', is to be judged, by its `effect' on a `Person', who is the `object of conduct', in question.*

***34.** A `preponderance of probability suffices', but the degree of probability must be such that the `Tribunal', is satisfied and further that under Section 66 of the I & B Code, 2016, it is not essential to attract that there ought to be a `Debtor' and a `Creditor' relationship.*

xxx xxx xxx

***38.** The Appellant has a `duty', to establish to the satisfaction of this `Tribunal', that a `person', is knowingly carrying on the business with the `Corporate Debtor', with an `dishonest intention', to `defraud', the `Creditors'. For a `Fraudulent Trading' / `Wrongful Trading', necessary materials are to be pleaded by a `Litigant' / `Stakeholder', by furnishing `Requisite Facts', so as to come within the purview of the ingredients of Section 66 of the I & B Code, 2016. Suffice it, for this `Tribunal', to pertinently point out that the ingredients of Section 66 (1) and 66 (2) of the I & B Code, 2016, operate in a different arena."*

15. Further, in case of ***Regen Powertech Pvt Ltd vs M/s. Wind Construction Private Limited, Company Appeal (AT)(CH)(Ins) No. 349 of 2022***, it is held as follows :

33. Be it noted, this 'Tribunal', significantly, points out that, whenever 'Fraud' on a 'Creditor' is perpetrated in the course of 'carrying on Business', it does not necessarily follow that the 'Business' is being carried on with an 'Intent to Defraud' the 'Creditor'.

34. One cannot remain 'oblivious' of the candid fact that, if the 'Directors' of a 'Company' had acted on a 'bonafide belief' that the 'Company' would 'recover' from its 'Financial Problems' / 'Difficulties', then, they will not be held liable for the 'act' / 'offence' of 'Fraudulent Trading'.

35. As a matter of fact, the 'aspect' of 'Fraudulent Trading' requires a very 'High Degree of proof', which is attached to the 'Fraudulent Intent'. To put it emphatically, a more compelling 'Material' / 'Evidence' is required to satisfy the conscience of this 'Tribunal', 'on a preponderance *of probability'. Apart from that, an 'isolated' / 'solo fraud' case, against the person, then, action in 'tort' can be resorted to, as opined by this 'Tribunal'. No wonder, a 'Creditor', who was defrauded, will have 'recourse' to an 'alternative remedy', under 'Civil Law'.*

16. The applicant has alleged that the Impugned Transactions have been undertaken by the Respondent in connivance with parties which are either related or potentially related parties to the Corporate Debtor and the effect of such transaction has been an increase in the liability of the Corporate Debtor, detrimental to the interests of the bonafide creditors of the Corporate Debtor. However, the above analysis of account of NEPL as placed by the Applicant on record does not substantiate the allegation of the applicant that these transactions had the effect of increasing the liability, though, there is reduction in receivables from NEPL by a sum of Rs. 19.18 crores even if provision for impairment in value of receivable amounting to Rs. 2,271.56 crores is taken into consideration which in our considered view is a merely accounting entry and does not take away right of the corporate debtor to release the said sum, if it is recoverable. In our considered view the applicant can not seek recovery of these amounts, including amounts represented by the Impairment provisions and Write offs, recoverable from NEPL by the suspended board members impugning the transactions in NEPL's ledger account as fraudulent.
17. In view of above discussion and judicial precedents laying down that the intent to `defraud', is to be judged, by its `effect' on a `Person', who is the `object of conduct', in question, we are of considered opinion that the impugned transactions do not meet the ingredients of section 66 of IBC.
18. Hence, IA 770 of 2021 is dismissed and disposed of.

Sd/-	Sd/-
Prabhat Kumar	**Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)