

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

CA Nos 197, 198 & 199 of 2017

In

CP (IB) No.97/7/HDB/2017

CA Nos. 197 & 198 of 2017 U/s 19(2) of IBC, 2016

CA No. 199/2017 U/s 60 of IBC, 2016

In the matter of

MACK Soft Tech Private Limited,
Q City, 6th Floor, Block-A,
Sy.No.109, 110 & 111/2, Nanakramguda Village,
SerilingampallyMandal,
Hyderabad - 500 032.

... Applicant / Respondent

Versus

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OF THE ORIGINAL



Quinn Logistics India Private Limited
2nd Floor, SVSKL Mansion
H.No. 3-6-369/A/18
Street No.1, Himmayat Nagar
Hyderabad - 500029

...Respondent / Petitioner

Mr. Sundresh Bhat
IRP for Mack Soft Tech Pvt. Ltd
BDO India LLP
Ruby-Level 9, NW Wing
Senapati Bapat Marg, Dadar West,
Mumbai- 400028

...Applicant in CAs
198/199 of 2017/ Respondent / IRP

Date of order: 20th November, 2017

CORAM:

Hon'ble Shri. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Shri. Ravikumar Duraisamy, Member (Technical)

Parties /Counsels present:

For the Applicant/Respondent:
Corporate Debtor:

Mr. Amit Sibal, Sr. Advocate
with Mr. Rohan Jaitley,
Mr.Pervinder Tanwar & Mr.
Ferida Satarwala Chopra
Advocates

For the Respondent No.1/
Financial Creditor:

Mr.Rajeev Nayyar, Sr. Advocate
along with Mr. Swapnil Gupta, Mr
M. Ramu Advocates.

Counsel for IRP/
Respondent No.2:

Mr. Abhinav Vashist, Senior
Advocate with Mr Rahul
Dwarkanadas, Mr Joran Diwan,
Advocates

Counsel for Quinn Finance
Unlimited Company

Mr. Arun Kathpalia Senior
Advocate

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER



1. The Company Application bearing CA No. 149/2017 in CP (IB) No. 97/7/HDB/2017, is filed by Macksoft Tech Private Limited, U/s 60 (5) of IBC 2016, by inter alia seeking directions to replace Mr.Sunderesh Bhat, Interim Resolution Professional (IRP) in the matter of Mack Soft Tech. Pvt. Ltd with any other independent IRP as deemed fit by Tribunal etc.
2. The Company Application (CA No. 149 of 17) was heard by the Adjudicating Authority, and passed interim orders on 15.09.2017 by permitting the IRP to proceed with first meeting of Committee of Creditors (COC) of Mack Soft Tech Private Limited scheduled to be held on Tuesday, 19th September, 2017 with a stipulation that proceedings taken place during the meeting should be kept pending till the next date of hearing. Accordingly, the case was posted from time to time till today by extending the said interim orders. The Parties, on the earlier occasions, were directed to argue the above Company Application finally today. However, both the parties have filed three CAs bearing Nos. 197, 198 & 199 of 2017 today and they did not want to argue all above CAs together and that too after filing their

respective replies to the fresh CAs. Therefore, we could not take up CA No 149 of 2017 for final hearing today.

3. CA No.197 of 2017 is filed on behalf of Mack Soft Tech Private Limited, U/s 60 of IBC, 2016 by inter-alia seeking interim directions to re-constitute the Committee of Creditors (CoC) by deleting Quinn Finance Unlimited Company from it; to quash all actions taken by the IRP Mr.Sundaresh Bhat so far; to restrain the IRP from issuing notice or conducting any meeting of Committee of Creditors; to restrain Quinn Finance Unlimited Company, from attending and/or participating and/or voting at the meeting of Committee of Creditors , etc pending disposal of the Company Application.



Mr. Sundaresh Bhat, Learned IRP, has filed two applications bearing CA.Nos. 198 & 199 of 2017 U/s 19(2) of IBC, 2016. CA No. 198/2017 is filed by inter-alia, seeking to direct the Management, Chief Financial Officer and suspended Directors of the Corporate Debtor to provide him (IRP) with all necessary documents and details relating to the software Seekmaster; and also all such other assistance as may be required to carry out his duties as IRP etc.

CA No. 199 of 2017 is filed by the learned IRP by inter-alia, seeking directions to the Management, Chief Financial Officer and suspended Directors of the Corporate Debtor to provide him with all necessary documents and details relating to payments made to Freebird Industries, Minerali FZE Minerali Holdings Pvt. Ltd and Cresco as well as certain other companies etc.

5. We have heard Mr. Amit Sibal, Learned Senior Advocate along with Mr. Rohan Jaitley, Learned Advocate for Mack Soft Tech Private Limited; Mr. Rajeev Nayyar, Learned

Senior Advocate along with Mr. Swapnil Gupta Learned Advocate for Quinn Logistics India Pvt. Ltd; Mr. Abhinav Vasisht, Learned Senior Advocate with Mr. Joran Diwan & Mr. Rahul Dwarkadas for Mr. Sunderesh Bhat, IRP, and Mr. Arun Kathpalia, Learned Senior Advocate for proposed impleading Respondent (Quinn Finance Unlimited Company) and also carefully perused all the pleadings of the parties along with the extant provisions of IBC, 2016 and rules made thereunder.

6. Mr. Amit Sibal, the Learned Senior Advocate along with Mr. Rohan Jaitley for Mack Soft Tech Private Limited, submitted that, though he is ready for arguments in CA 149 of 2017, he wants to file replies to the CA Nos. 198 & 199 of 2017 filed by IRP. It is alleged that even though the order dated 15.09.2017 is in force as on today, the Learned IRP is further proceeding by issuing notices to conduct further meetings of the Committee of Creditors, which is not only contradictory to the orders passed by this Tribunal but also against the orders dated 22.08.2017 passed by Hon'ble NCLAT in CA (AT)(Ins) No. 143 of 2017. The learned senior Advocate further pointed out that interim order dated 15.09.2017 was admittedly not questioned, and thus it has to be extended. He, therefore, submitted that the interim orders passed by this Tribunal on 15.09.2017 may be extended till the disposal of the CAs, and also restrain IRP from proceeding further, however, with exception of directions contained in interim order dated 22.08.2017.
7. Mr. Rajeev Nayyar, Learned Senior Advocate for Quinn Logistics India Pvt Limited (Financial Creditor) on the other hand, has strongly opposed the extension of interim orders. He has contended that Hon'ble NCLAT has not suspended order of this Tribunal dated 11.08.2017 in CA (AT) (Ins)



No.143 of 2017 but only passed the following Interim Orders on 22.08. 2017.

“In the meantime, Insolvency Resolution Professional will ensure that the company remains ongoing and the dues of the employees/workmen are paid on time and if any material is supplied during corporate resolution process, the payment must be paid to the supplier/creditor. If so necessary, the Insolvency Resolution Professional will take aid of (suspended) Board of Directors. The Bank having account of the corporate debtor will cooperate with the Insolvency Resolution Professional to ensure compliance of this order”.

Secondly, he has contended that the Tribunal do not have any inherent jurisdiction, either under the provisions of IBC, 2016 or rules made there under. However, he has accepted passing of interim orders on 15th September, 2017, as a grace but now he would not accept to extend it. In support of his contention, he has relied upon the judgement of Hon'ble Supreme Court in MORGAN STANLEY MUTUAL FUND Vs. KARTICK DAS (1994) 4 Supreme Court Cases 225 and other cases

He therefore submit that this Tribunal should not extend the interim order dated 15.09.2017, and also cannot restrain the IRP from proceeding further in accordance with orders dated 11th August, 2017, the provisions of IBC and Rules made thereunder.

8. Shri Abhinav Vashist, Learned Senior Advocate representing the Learned IRPhas filed two CAs, however submit that the CA No. 197/2017 is not maintainable at all as the Hon'ble NCLAT has not interfered with the order of this Tribunal dated 11.08.2017 and the IRP is entitled to proceed in accordance with law in pursuant to the directions given by



this Tribunal dated 11.08.2017. He has strongly refuted all the allegations made by Mack Soft Tech Private Limited, and the IRP is fully empowered and competent to act as IRP/RP. He also requested time to file reply to the CA No. 197 of 2017 and also submit that this Tribunal may pass Interim orders as prayed for in CA No. 198 & 199 of 2017 filed on behalf of IRP pending disposal of the CAs.

9. Shri Arun Kathpalia, Learned Senior Advocate, volunteered to accept notice for Quinn Finance Unlimited Company and submitted that CA No.197/2016 is not at all maintainable without impleading Quinn Finance Unlimited Company as one of Respondents as the applicants sought relief against it. Therefore, it is liable to be dismissed *In limine* without going to the merits of the case for non-joining of necessary parties. However, the learned Senior Advocate requested time to file reply for the application.

10. We have carefully considered all the pleadings of the parties. Aggrieved by the order of this Tribunal dated 11.08.2017, Mack Soft Tech Private Limited/Respondent in CP, has preferred an appeal before the Hon'ble NCLAT vide CA(AT)(Ins) No. 143 of 2017. The Hon'ble NCLAT, while permitting the Appellant to file certified copy of the impugned order dated 11.08.2017, along with additional affidavit, has passed interim orders dated 22.08.2017 as extracted supra. And this order is in consonance with provisions of Section 20 of the IBC, 2016. Section 20 of IBC reads as under:-

'Management of operations of corporate debtor as going concern

- “(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.



(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-

- (a) to appoint accountants, legal or other professionals as may be necessary;
- (b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;
- (c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property;
PROVIDED that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt;
- (d) to issue instructions to personnel of the Corporate Debtor as may be necessary for keeping the corporate debtor as a going concern; and
- (e) to take all such actions as are necessary to keep the corporate debtor as a going concern.



By reading of the orders of the Hon'ble NCLAT and above provisions of IBC, 2016, there is no ambiguity as to what nature of action(s) the IRP has to take in order to manage the operations of the Corporate Debtor as a going concern, while the matter is pending here and before the Hon'ble Appellate Tribunal.

14. We are not inclined to accept the contention of Mr. Rajeev Nayyar with regard to lack of jurisdiction for the Tribunal to

pass any interim orders. As stated supra, the IRP has also filed two CAs asking for interim directions but those CAs were not opposed by him. Any way, we will examine the issue of lack of jurisdiction, while deciding the Company applications. Since the above CAs, and also appeal are pending, we are inclined to extend above interim order till the next date of hearing with a further directions to IRP to strictly adhere to the interim orders dated 22.8.17.



9. In view of the facts and circumstances of the case, we passed the following interim orders pending disposal of all four CAs as mentioned above:-

- (a) The interim orders dated 15.09.2017 is extended till the next date of hearing.
- (b) The IRP is directed to strictly adhere to the interim orders passed on 15.09.2017, and also the order dated 22.08.2017 passed by Hon'ble NCLAT, and also strictly comply with Section 20 of the IBC, as extracted above.
- (c) All the parties are directed to complete their respective pleadings including rejoinder(s) if any, in CAs 197, 198 & 199 of 2017, duly exchanging with opposite parties, well in advance, before the next date of hearing.
- (d) We make it clear that no further adjournment shall be granted to any party, since the case is adjourned to 15.12.2017 with consent of all the parties.
- (e) Directed to post CA Nos. 149, 197, 198, 199 of 2017 for final hearing on 15.12.2017, high on list.

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y. Regr./Asst. Regr./Court Officer/
onal Company Law Tribunal, Hyderabad Bench

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केस संख्या
CASE NUMBER CP(CB) No. 92/2/1/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 20.11.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 20.11.2017

RAVIKUMAR DURAISAMY
Member (Technical)

RAJESWARA RAO VITTANALA
Member (Judicial)