

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

CAs 149 of 2017
In
CP (IB) No.97/7/HDB/2017

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

1. 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

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

... Respondent/IRP

Date of order: 15th December, 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, Ms. Ranjana Roy
Gawai, Ms Ferida Satarawala
Chopra Mr. Pervinder,
Advocates for Mack Soft
Tech Private Limited



For the Respondent No.1/
Financial Creditor:

Mr. Rajiv Nayyar, Sr.
Advocate with Mr. Swapnil
Gupta, Mr M. Ramu
Advocates for Quinn
Logistics India Private
Limited

Counsel for IRP/

Mr. Abhinav Vashist, Senior
Advocate for IRP along with
Mr. Rahul Dwarkadas, Mr.
Joran Diwan, Advocates

Respondent No.2:

Mr. Sundaresh Bhat, IRP
(party-in person)

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 Insolvency and Bankruptcy Code 2016, by seeking suitable directions to replace Mr. Sunderesh Bhatt, Interim Resolution Professional (IRP) in the matter of Quinn Logistics India Private Limited vs. Mack Soft Tech Private Limited with another independent IRP etc
2. Heard Mr. Amit Sibal, Senior Advocate, with Mr. Rohan Jaitley, Ms. Ranjana Roy Gawai, Ms. Ferida Satarawala Chopra, Mr. Pervinder, Advocates for the applicant/Corporate Debtor; Mr. Rajeev Nayyar Senior Advocate with Mr. Swapnil Gupta, Mr M. Ramu Advocates for the respondent/petitioner(Quinn Logistics); Mr. Abhinav Vashist, Senior Advocate for IRP along with Mr. Rahul Dwarkadas, Mr. Joran Diwan, Advocates & Mr. Sundaresh Bhat, IRP (party-in

person); Mr. Arun Kathpalia, Senior Advocate for Quinn Finance Unlimited Company. And also have carefully perused all pleadings made by respective parties along with extant provisions of IBC, 2016 and the rules made there under.

3. This Company Application was heard by the Tribunal and passed interim orders on 15.09.2017 and the case was posted from time to time till today with continuation of above interim orders. The Parties on the earlier occasion were directed to argue the above Company Application finally today. When all the CAs including CA No.149 of 2017 were taken up for final hearing, the Learned Senior Counsels for the parties submit that the pleadings are yet to complete in all the three CAs and thus requested further time. However, they agreed that the Tribunal can consider permitting to convene the meeting of the Committee of Creditors (CoC) of the Company by the existing IRP for his replacement.

4. Shri Amit Sibal, Learned Senior Counsel for Macksoft Tech Private Limited has strongly opposed to pass any further interim, in addition to interim orders dated 15.09.2017 and 20.11.2017 which are already passed by the Tribunal. Moreover, these orders were not questioned and thus subsisting as on day. And instead of passing further interim orders, it would be just and proper to decide all three CAs in question. It is also stated that constitution of Committee of Creditor by including Quinn Finance Unlimited (Quinn Fiancé) itself is a dispute to be decided in the Company application pending, permitting the same committee of Creditors



to change the existing IRP would not serve any purpose as there is likely hood that new IRP/RP may not be independent. The Learned Senior Counsel has expressed serious apprehension on proposed conducting of Committee of Creditors which inclusive of Quinn Finance.

5. Shri Rajeev Nayyar, Learned Senior Counsel for the Respondent (Quinn Logistics India) inter-alia submitted that Committee of Creditors constituting Quinn Logistics India, Quinn Finance and HDFC Ltd, in its meeting held on 19th September, 2017 has unanimously approved the appointment of IRP Mr. Sundaresh Bhat, to act as Resolution Professional. So any selection of another professional to be appointed in place of Mr. Bhat would also have to be approved by the COC. Since, the choice of IRP/RP lies with Creditors, the COC may be permitted to meet and select a resolution professional other than Mr. Bhat and suitably extending further time to complete CIRP in question since so much time has been lapsed on un-tenable litigation. Since the instant application itself, is not maintainable, on the simple ground, that it is filed by Member of suspended Board, the Tribunal should not interfere in the statutory process CIRP in question, as so much precious time (125 days out of 180 days) is already lapsed by raising un-wanted litigation. In fact, present CA No. 149 of 2017 itself rendered infructuous by agreeing to change the present IRP by COC. Therefore, it would be just and proper to permit the COC to meet in accordance with law to select a new Resolution professional as proposed.



6. Shri Abhinav Vashist, Learned Senior Counsel representing the IRP has filed a memo dated 14.12.2017, by inter-alia contenting that the Complaint filed by Mecon International Trading/Mecon FZE and Cresco Legal FZE and Senat FZC dated 05.09.2017 before the IBBI under Section 196 of the Code was decided by letter dated 13.12.2017 by closing the complaint itself as “not substantiated”. The Learned senior has strongly denied various allegations insinuation and accusations levelled against the IRP as baseless and un-tenable. However, in order to see that statutory process of CIRP should not be hampered by un-wanted ligation and in the interest of justice, he agrees to quit as IRP, however, subject to reimbursement of all his fees, costs and out of pocket by the COC which is to be convened soon in pursuance of order of this Tribunal.



7. Shri Arun Katpalia, the learned Senior Counsel for the Quinn Finance Unlimited Company, has submitted that that IRP by forming of Committee of Creditors has invited them for first meeting of CoC on 19th September, 2017 by notification dated 12th September, 2017. Accordingly, the first CoC, which consists of Quinn Logistics India Pvt Ltd, Quinn Finance Unlimited Company and HDFC, was conducted on 19th September, 2017. Therefore, the present applicant has no locus-standi to question the status of Quinn Finance. Moreover as per the provisions of the IBC, the Petitioner cannot question each and every action of the IRP on each and every grounds. Quinn Finance Unlimited Company is legally entitled to be part of the CoC. All the grounds raised by the Applicant in the

present CA is not at all tenable and liable to be rejected. Therefore, the Learned Senior Counsel submitted that the Tribunal may permit to convene proposed CoC, which should invariably consists of Quinn Finance. The Learned Senior Counsel further submit that already 125 days precious time out of 180 days under the Act is usurped by the Applicant by filing frivolous applications by misusing and abusing the process of law. Therefore, the Insolvency Resolution process as directed by the Tribunal should be permitted to continue and the Hon'ble NCLAT also permitted the Tribunal to decide the instant CA.



8. We have considered the pleadings of all the parties. As stated supra, all the Learned Senior Counsels are not willing to argue all the CAs finally, and wanted further time on one reasons or the other. Since main prayer of applicant to change IRP is accepted both by CoC and IRP, it would be just and proper to permit the CoC to be convened so as to consider for the same , however, subject to final order(s) to be passed in all pending 3 CAs by the Tribunal. Though the Hon'ble NCLAT has permitted us to decide miscellaneous issues raised by the parties, while the appeal pending there, we could not decide it finally due to the reasons stated supra. At the same time, CIRP in question, which is already started, should be permitted to continue by convening CoC to change IRP.
9. So far as allegations made by the applicant against IRP is concerned, it is on record that IBBI, a competent Authority, has closed complaint vide File No. IBBI/IP/20(f1)2017-18 dated 13th December, 2017.

Therefore, we hardly have any jurisdiction on the learned IRP. However, the IRP is entitled for reimbursement of all his fees, which he is entitled as per law for the work done till date. The proposed CoC is supposed to settle the all the legal claims of IRP, While considering issue of change of Resolution Professional.

10. Since the issue raised in the present application is not an isolated one, and, it should be decided by taking a comprehensive view on various issues raised in all three pending Company applications in question, we are inclined to pass the following further interim orders in addition to interim already passed and are in force as on date.



11. In view of the above facts and circumstances of the case, the following interim orders in passed pending final disposal of CA No. 149 of 2017 and other connected CAs;

- (a) Hereby permitted the IRP to convene a meeting of Committee of Creditors to consider to replace the existing IRP, and to suggest new IRP in proposed meeting;
- (b) The decision taken by the Committee of Creditors approving the new name of RP to be placed before the Adjudicating Authority on the next date of hearing. All the procedure required to be followed, under IBC, while suggesting Interim Resolution Professional should be followed in the instant case also;
- (c) The decision to be taken by the Adjudicating Authority is subject to final order to be passed in the case.

- (d) This order is passed subject to any order(s) to be passed by the Hon'ble Tribunal in a pending Appeal.
- (e) Post all CAs on 15.01.2018 for final hearing with a condition that no further adjournment shall be granted at the request of any party, on any ground.



Sd/-

RAVIKUMAR DURASAMY
MEMBER (TECHNICAL)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

For Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER C.P.(N.D.) No. 972/1/NDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 15.12.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 21.12.2017