

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

CA 149 of 2017
In
CP (IB) No.97/7/HDB/2017
U/s 7 of IBC 2016 R/w Rule 4 of
I & B (AAA) Rules, 2016

In the matter of

MACK Soft Tech Private Limited,
Q City, 6th Floor, Block-A,
Sy.No.109, 110 & 111/2, Nanakramguda Village,
Serilingampally Mandal,
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
Senapati Bapat Marg Dadar West,
Mumbai- 400028

... Respondent / IRP

Date of order: 16th January, 2018

CORAM:

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

Parties /Counsels present:

For the Applicant/Respondent

(Corporate Debtor):

Ms Ferida Satarawala Chopra
with Mr. Pervinder,
Advocates

For the Respondent No.1/



Financial Creditor: Mr.Jayant Mehta Advocate
with Mr.Swapnil Gupta, Mr
M. Ramu, Ms. Sinha
Advocates.

Counsel for IRP/ Mr.Abhinav Vashist, Senior
Advocate for IRP along with
Mr. JoranDiwan, Advocates
Mr.SundareshBhat, IRP
(party-in person)

Per: Rajeswara Rao Vittalana, 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 interalia seeking directions to replace Mr.Sunderesh Bhatt, as Interim Resolution Professional (IRP) by appointing any other independent IRP in his place as the Tribunal may deem fit in the instant Corporate Insolvency Resolution Process.
2. The brief facts leading to the filing of present application are that in pursuance to appointment of second respondent (Sunderesh Bhat) as IRP, It is alleged by the Applicant that he has attempted un-authorised takeover of the Company bringing its own security in the Company to stake and resorted to several illegal actions violating the Code of conduct for Insolvency Professional as enumerated under First Schedule of under Regulation 7 (2) (g) of I & B BOI (Insolvency Professionals) Regulations 2016.
3. Apart from the present Application, other CA Nos. 197,198 and 199 of 2017 were filed by the parties by

seeking various reliefs. After hearing CA No. 149 of 2017, the Tribunal passed interim orders on 15.09.2017 and posted the case on 26.09.2017. Subsequently, another interim order dated 20th November, 2017 was passed in CA Nos. 197, 198 & 199 of 2017 by posting all CAs to 15.12.2017 for final hearing. Consequently the cases are listed for hearing on 15th December, 2017, and after passing further interim orders, the cases stand posted to 15.01.2018 subject to a condition that no further adjournment shall be granted to any party on any ground. Accordingly, the case is posted for hearing today as 15th January, 2018 was declared as holiday for this Bench.

4. Heard Ms. Ferida Satarwala Chopra with Mr. Pervinder, Advocates For the Applicant/Respondent (Corporate Debtor): Mr. Jayant Mehta Advocate with Mr. Swapnil Gupta, Mr. M. Ramu, Ms. Sinha Advocates. Mr. Abhinav Vashist, Senior Advocate for IRP along with Mr. Joran Diwan, Advocates along with Mr. Sundaresh Bhat, IRP (party-in person). The entire case file is carefully perused along with extant provisions of IBC, 2016 and the rules made there under.
5. Ms Ferida Satarawala Chopra Learned Counsel for Macksoft Tech Private Limited (Applicant / Corporate Debtor) has fervently appealed to the Tribunal that the case may be adjourned to some other date since Senior Counsel on record could not be present today and the case originally slated for 15th January, 2018 and the appeal preferred against the order is still pending before the Hon'ble NCLAT. And further submitted that apart from change of IRP, some other consequential issues require to be adjudicated and the IRP is not entitled for exoneration of charges as they have appealed over the closure of Complaint vide File No. IBBI/IP/20/f1)2017-18 dated 13th December, 2017 passed by



the IBBI. Therefore, the Tribunal should not decide and pass final orders on the pending applications.

6. Mr. Jayant Mehta, Learned Counsel appearing for Quinn Logistics Private Limited, inter-alia submits that once CIRP started, it should be continued without any interruption in the light of time frame as prescribed under the Code. On the other hand, Hon'ble NCLAT has also permitted this Tribunal to go ahead and decide the matter with regard to change of IRP etc. In order to find a solution to the issue in question in the main Company petition it is necessary to grant for a further period of 90 days beyond 180 days and to appoint Resolution Professional as approved by COC. Accordingly he has filed two separate applications by inter-alia seeking direction to forward the name of the proposed Resolution Professional to the Insolvency and Bankruptcy Board of India (IBBI) for confirmation to appoint Mr. Mohan Lal Jain as Resolution Professional of the Corporate Debtor since proposed Resolution professional is eligible to be appointed a such.

7. Mr. Abhinav Vashist, Learned Senior Counsel for the IRP, pointed out that the Tribunal passed an interim order dated 15.12.2017, the operative part which reads as under:-

- (a) *"Hereby permitted the IRP to convene a meeting of CoC to consider to replace the existing IRP, and to suggest new IRP in proposed meeting.*
- (b) *The decision taken by the CoC 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".*

In pursuance to the above directions of Tribunal, the Interim Resolution professional has taken appropriate action and thus filed a memo dated 12th January, 2018, by inter-alia stating that the meeting of CoC was held on 08.01.2018 under the aegis of IRP and various resolutions have been voted upon and unanimously passed, which includes replacement of IRP of Mack soft Tech Private Limited, approving payment of remuneration and expenses of the IRP and proposing new Resolution Professional namely MR. Mohan Lal Jain etc.



Mr. Abhinav Vashist, the Learned Senior Counsel further submitted that since the IRP wanted to quit from CIRP in order to facilitate for its continuation without interruption due to his continuance, he is entitled for all re-imbursement of his legal and other expenses as approved by the Committee of Creditors apart from honourable exoneration of all charges made against him by the applicant /respondent . He also further pointed out that IBBI also found that there is no basis for the allegations made against him by the applicant/respondent and mere pending appeal against that order does not come in the way of exoneration of charges. Therefore, the learned senior counsel submits that second respondent (IRP) is entitled for legal and other expenses apart from clean chit in all the allegations made against him and continuance as IRP as stop gap arrangement till new Resolution professional is appointed. And also sought to grant extension of time for the further period of 90 days.

8. It is not in dispute that the order passed by this Tribunal dated 11.08.2017 admitting the case is under appeal before

the Hon'ble NCLAT and in the meanwhile, this Bench is permitted to hear and decide the pending miscellaneous applications. Even though, the Tribunal extended several opportunities to the parties, the Tribunal could not pass final orders even though law mandates to decide issues arise out of IBC, 2016 in a time bound manner. Though the case is posted today with consent of all parties, still one of the parties wanted further time on un-tenable grounds. I find there is no justifiable reason on the part of applicant/respondent to seek further adjournment.

9. The CIRP in question is initiated as early as 11th August, 2017 and hardly any substantial development took place till date except for the issue landing in so many limitations before this Tribunal and Hon'ble NCLAT. This Tribunal is under legal obligation to facilitate CIRP process to continue as it have already held that that it is fit case to initiate CIRP unless the Hon'ble NCLAT and Apex court interfered in the matter. In the meanwhile, as rightly pointed out by the Learned Senior Counsel for IRP, the IRP is entitled for payment of his remuneration and expenses as approved by CoC ;for exoneration of charges; continuation as IRP till a regular Resolution Professional as suggested by CoC is finally confirmed.

10. The contention of the Learned Counsel for Macksoft Tech Private Limited that there are still other consequential reliefs which remain to be considered even though the main relief as asked for in the present application became infructuous is hardly having any merit. The Bench is fully aware of various pleadings made by the parties in various applications filed in the main Company petition and also passed various interim orders so as to see the CIRP in question should be continued without interruption. Therefore, it is not justified to adjourn the matter again at the instance of very party, which raised extensive litigation against the initiation of CIRP in question. As rightly pointed out by Mr. Jayant Mehta, that the order dated 15.12.2017 of



this Tribunal is binding on the parties, and the Tribunal is under bounded legal duty under the Code to see the CIRP initiated by itself vide order 11th August 2017 should be allowed to continue without interruption. The IRP should no longer suffer in any manner for the allegations made against him substantially as more so ever when the IBBI, the Competent Authorities has also found no substance in the allegations. And pending a review/appeal against the order of IBBI, will not hardly come in the way of this Tribunal to pass appropriate orders. Therefore, I am of the considered opinion that CIRP in question should be permitted to continue by passing appropriate orders with regard to extension of time; payment of remuneration to IRP and his continuation; exonerate IRP from charges etc. It is also on record that separate applications bearing CANO16/2018 (For extension of Time), CANO17/2018 (For appointment of Mr. Mohan Lal Jain as Resolution Professional) are filed and separate orders are passed in these applications



11. In the light of above discussions of the case, the following interim orders are passed, pending CA Nos. 149, 197, 198, 199/2017;
- (a) Granted extension for a further period of 90 (ninety) days w.e.f. 08.02.2018 beyond 180 days of the CIRP of Mack soft Private Limited;
 - (b) The CoC is directed to pay IRP's the remuneration and expenses as approved by it within a week from the date of receipt of copy of this order ;
 - (c) The IRP shall continue to function till new Resolution professional as approved by Coc is appointed after duly following the procedure prescribed under the law;
 - (d) The IRP is declared to be free from all allegations made against him so as to prosecute his professional career:.
 - (e) Approved the appointment of Shri Manohar Lal Jain as Resolution Professional in place of Shri Sundaresh

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Bhat, IRP, as per Section 27(4) of IBC, subject to confirmation by IBBI. And the Registry is directed to intimate to IBBI for confirmation;

- (f) Post all CAs for final disposal on 31st January, 2018

Sd/-

Rajeswara Rao Vittanala

Member (Judicial)

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या

CASE NUMBER

निर्णय का तारीख

DATE OF JUDGEMENT

प्रति तैयार किया गया तारीख

COPY MADE READY ON

CA 149 of 2017
CP (IB) No. 977/HDB/2017
16.1.2018
22.1.2018

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