

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

(IB)-102(PB)/2017

**IN THE MATTER OF:**

DBS Bank Ltd.

.....Petitioner

v.

Edu Smart Service Pvt. Ltd.

.....Respondent

SECTION : UNDER SECTION 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on 21.08.2017

**Coram:**

CHIEF JUSTICE M.M. KUMAR  
Hon'ble President

Deepa Krishan  
Hon'ble Member (T)

For the Petitioner(s) :

For the Resolution Professional : Mr. Arun Kathpalia, Senior Advocate  
Mr. Niraj Kumar & Mr. Aditya Dewan, Advocates  
Ms. Ritu Rastogi, Resolution Professional

**ORDER**

C.A. No. 257(PB)/2017

The present application filed on behalf of Insolvency Professional has prayed for issuance of necessary clarification in respect of the issues elucidated by the applicant in para 3 of the application. The following issues have been raised at the time of arguments from para 3 which reads as under:-

- "iii Whether the invocation of corporate guarantee by ICICI Bank which does not conform to the stipulations of the ESL Corporate Guarantee and STA be treated as valid invocation and ICICI Bank be allowed to participate in the COC?



- iv. With respect to the claim for the loan facilities availed by ESL, can the claim lodged by the ICICI Bank be rejected by IRP/RP on the ground that it is already participating in the resolution proceedings, including the COC meetings, initiated in the case of the Principal Borrower i.e. ESL?
- vi. In case ICICI Bank is permitted to be a part of the COC in the present case and is also granted voting rights, what is the value for which such voting right is to be granted?"

The aforesaid issues are entirely in the domain of the Insolvency Professional and in the midstream, when the process of resolution plan is in progress, it will not be proper to opine either way by this Tribunal. Of course, at the time when the resolution plan comes up for final approval of the Tribunal all such arguments would be available to the parties. In the meanwhile, the Insolvency Professional must exercise her wisdom and discretion particularly when her work is facilitated by moratorium envisaged by Section 14 of the Code which has been in operation.

In view of the above, we hold that the application is not maintainable at this stage and the same is dismissed.

Sdl-

(CHIEF JUSTICE M.M. KUMAR)  
PRESIDENT

Sdl-

(DEEPA KRISHAN)  
(MEMBER TECHNICAL)