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

CA. No. 149 of 2017
In
CP No.97/7/HDB/2017
U/S 60 (5) of Insolvency and Bankruptcy Code, 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
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

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

... Respondent / Petitioner

Date of order: 15 .09.2017

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. U.K. Choudhary, Sr. Advocate,
with Mr. Rohan Jaitley, Ms.Ranjana



Roy Gawai, Mr. Pervinder,
Advocates

For the Respondent No.1/
Financial Creditor:

Mr.Rajiv Nayar, Sr. Advocate with
Mr.Swapnil Gupta, Mr M. Ramu
Advocates.

Counsel for IRP/
Respondent No.2:

Mr. Sundaresh Bhat, IRP (party-in
person)
Mr. P. Ravi Charan, Advocate for
IRP.

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) of the Respondent Company, and appoint any another independent IRP, and pass such other consequential order(s), as deem fit and just in circumstances of the case.
2. The learned counsel for the Applicant requested the Tribunal to take up CA No, 149/2017 by way of lunch motion on 24.08.2017. However, the case was directed to be posted on 28.08.2017. On 28.08.2017, the Respondent Counsel accepts notice and requested time. So the case stands posted to 12.09.2017 and again to 15.09.2017 at the request of the Respondents.
3. We have heard Mr. U.K. Chowdhary, the Learned Senior Counsel along with Mr. Rohan Jaitley, Ms Ranjana Roy



Gawai, Learned Counsels for the Applicant Company; Mr. Rajeev Nayyar, Learned Senior Counsel along with Mr. Swapnil Gupta and Mr. M. Ramu, Learned Counsels for the Respondent No.1 and Mr. Sundaresh Bhat, IRP/Respondent No.2.

4. Mr. U.K. Chowdhary, the Learned Senior Counsel for the Applicants submit that, in pursuant to the order passed by this Tribunal, appointing the IRP/Respondent No.2, he has unauthorizably took over of the Company by bringing its own security in the Company. He also visited the premises on 22.08.2017 in evening along with four bouncers and demanded that the Management should sign an undertaking to cooperate with him/IRP. It is alleged that IRP has been working as a partner in BDO India, LLP, having office at Ruby-Level 9, NW Wing, Senapati Bapat Marg, Dadar West, Mumbai-400 028, and they have recently came to know that one of the partners of the BDO, Hyderabad is one Shri Pradeep Kasthala, who is statutory auditor of Respondent Company along with the Petitioner Company and Quinn Lodgings India Pvt. Ltd as statutory Auditor till the year 2010. By making several allegations, the Learned Counsels for the Applicants submitted that IRP has conflict of interest as the Respondent Company is under bonafide belief that the IRP is working under the instructions of Mr. Pradeep Kasthala, and they have given a list of litigations between Petitioner and its group Companies Applicant/Respondent Company.
5. Mr. Rajeev Nayar, Learned Senior Counsel for the Respondent No.1 has strongly opposed the application, and filed a reply dated 4th September, 2017 by denying all the allegations made in the application. The Hon'ble NCLAT has not set aside the order of this Tribunal, and passed the following orders on 22.08.2017:-

"The appellant is allowed to file certified copy of the impugned order dated 11th August, 2017 alongwith additional affidavit within a week and may take additional plea as discussed today.



Mr ArunKathpalia, Sr. Advocate appeared on behalf of the Respondent. No further notice be issued on them. Learned Counsel for the appellant will serve a copy of the paper book alongwith additional affidavit to the Learned Counsel for the respondent within five days.

Post the matter on 8th September, 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.



6. Mr. Rajiv Nayar, the learned counsel for the Respondent No.1/Petitioner has submitted that the present application is not at all maintainable in the light of appeal pending before the Hon'ble NCLAT against the very order dated 11th August, 2017 passed by this Tribunal. So, the Hon'ble NCLAT has permitted the IRP to continue to discharge with his statutory duties in accordance with the law.
7. Mr. Rohan Jaitly, the learned counsel for the Applicant/Respondent on the other hand submit that, even though appeal is pending before Hon'ble NCLAT, this Tribunal can still deal with the issue of replacement of IRP as this Adjudicating Authority is having original jurisdiction to resolve this issue. Since, so many allegations having made against the Second Respondent/IRP, it would be just and proper to keep further proceedings of the IRP pending till final disposal of this application. The IRP is going ahead with conducting of the meeting of Committee of Creditors (CoC) of Mack Soft Tech Private Limited, to be held on Tuesday, 19th September, 2017 at 11 am at Ella Hotel, Hill Ridge Springs, 25 Kancha Gachibowli, ISB Road, Hyderabad, with the clear agenda of discussing various issues and voting during the meeting. If the IRP is permitted to

proceed as scheduled and decide the issues as proposed in Agenda, pending an appeal before the Hon'ble NCLAT and present CA No.149 of 2017, the applicant would be prejudiced. Therefore, it could be just and proper to keep the proceedings of the CoC to be held on Tuesday 19th September, 2017 pending till next date of hearing. He has further submitted that there is a complaint dated 5th December, 2017 against the IRP before IBBI and same is also pending.

8. Mr. Sundaresh Bhat (Respondent No.2) has also filed a counter dated 8th September, 2017 by inter-alia denying the allegations made against him and also undertakes that he would not repeat the mistakes he has committed, by explaining the actions, he has taken till now, and further committed that he would continue to abide to the code of conduct prescribed for insolvency provisions as enumerated under the first schedule.

We have considered the pleadings of both the parties along with material papers filed in support of their pleadings. Both the learned counsels have placed several pleadings by filing several documents, rejoinder etc. apart from the detailed reply of IRP. Since, the main issue in question is subjudice before Hon'ble NCLAT, this adjudicating authority cannot adjudicate any substantial issue till the Hon'ble NCLAT decide the main issue. However, the Hon'ble NCLAT, while keeping the issue pending, has only directed the IRP to ensure that the Company to be on going concern and also permit IRP to take assistance of suspended Board of Directors, apart from directing Bank to cooperate with the IRP so the IRP can comply with the order in the meanwhile. However, it would be appropriate for the applicant to approach the Hon'ble NCLAT seeking further orders, if any, in the meanwhile. It is not in dispute that the Adjudicating Authority will have original jurisdiction to adjudicate all issues with regard to Insolvency and Bankruptcy, in the first instance. Further, in the light of issue pending before Hon'ble NCLAT, we cannot have jurisdiction to



pass any orders in the meanwhile. Since the applicant is making several allegations against the actions of IRP, touching upon his integrity and the issues raised in present CA for change of IRP, cannot be decided at present and we are inclined to pass interim order, by permitting the IRP to proceed with scheduled meeting of CoC to be held on 19th September, 2017, however, subject to further orders to be passed by the Hon'ble NCLAT.

10. In view of the above facts and circumstances of the case, we hereby permitted the IRP to proceed with scheduled first meeting of Committee of Creditors (CoC) of Mack Soft Tech Private Limited scheduled to be held on Tuesday 19th September, 2017. However, the proceedings of this CoC should be kept pending till next date of hearing of the case. Post CA No.149 of 2017 to 26.09.2017 for further hearing.



Sd/-

Ravikumar Duraisamy

Member (Technical)

Sd/-

Rajeswara Rao Vittanala

Member (Judicial)

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OF THE ORIGINAL

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

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केस संख्या
CASE NUMBER CA.No.149 of 2017 IN
दिनांक पर तारीख CP No. 97/21428/2017
DATE OF JUDGEMENT 15.9.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 12.9.2017