

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

(18)C.P.(I.B.)-1832/7/(MB)/2017

MA 1061/2018 & MA 565/2018

MA 1037/2018

CORAM: Present : SHRI M.K. SHRAWAT
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 15.10.2018

NAME OF THE PARTIES: IDBI Bank Ltd.

V/s.

EPC Constructions India Ltd.

SECTION OF THE COMPANIES ACT: 7 OF INSOLVENCY AND BANKRUPTCY
CODE, 2016.

ORDER

1. The Learned Representatives of both the sides are present.
 2. MA 868/2018:- Listed for the first time on the issue of claim of the Applicant stated to be already submitted on Form-5. Learned Representative of the RP has stated that claim has been verified now. To be placed before the COC for admission. Stated that next COC meeting is on 22.10.2018. As a consequence, the RP shall revert back the fate of the claim and the opinion of the COC on the next date of hearing.
 3. MA 1061/2018:- Moved from the side of the Resolution Professional under section 12. Reasons stated as per "*Para 3. The Resolution Professional along with the Committee of Creditors of the Corporate Debtor has been working towards resolution of the corporate Debtor. In furtherance of the same, the Resolution Professional has, pursuant to the invitation issued under Section 25(2)(h) of the code, issued an advertisement inviting expressions of interest from prospective resolution applicants to submit their expressions of interest by July, 16, 2018. The Resolution Professional received expressions of interest from two (2) prospective resolution Applicants, of which one has withdrawn its expression of interest subsequently. Thereafter, with the approval of the Committee of creditors, the Resolution Professional extended the deadline for submissions of expression of interest till July 31, 2018 and further till August 25, 2018. The Resolution Professional received One(1) additional expressions of interest. The Resolution Professional, thereafter with the approval with the Committee of Creditors, has further extended the deadline for submission of expressions of interest upto September 22, 2018. The Resolution Professional has set up the date room and provided access to the prospective resolution applicants after receipt of their confidentiality undertaking for providing relevant information in relation to the Corporate Debtor for preparation of the resolution plan.*
- Para 4. It is respectfully submitted that in the present case, the Resolution Professional has received claims amounting to Rs. 9048.02 crores from financial creditors and has admitted claims amounting to Rs.7036.49 crores. The Resolution Professional has also received claims amounting to Rs.3054.42 crores*

from operational creditors which is currently under verification. The CoC is also in the process of reviewing and publishing the request for resolution plan laying out the details of the resolution plan submission process to the prospective resolution applicants that have submitted the expression of interest along with the evaluation criteria for the resolution plan in order to ensure a fair and transparent system of evaluation and ensuring that the best resolution plan is selected in the most transparent manner." Considering the reason as prayed for Ninety days time. Extended by invoking the jurisdiction under section 12. MA 1061 is allowed.

MA 1037/2018:- This Application is submitted by the Resolution Professional. Seeking an Order under section 48 of the Code in respect of Under Valued Transactions. Relief sought is as per "*a. That this Hon'ble Tribunal may be pleased to take on record the Partial Transaction Review Auditor's Report and pass appropriate directions in accordance with the Code in respect of the suspect transaction.*

b. That this Hon'ble Tribunal may be pleased to issue necessary order/directions that the 784 equipment leased to the Respondent be vested with/returned to the Corporate Debtor, and. c. That this Hon'ble Tribunal may be pleased to issue necessary orders/direction declaring Equipment Lease Agreement dated 01.07.2017 and non-est and null and void, and

In addition to the prayers as listed herein above Learned Representative has vehemently prayed that the Order be passed to get those leased Equipment back in the possession of the Professional. To be used in the completion of the consideration which are underway. Placed on record a Report of the Professional affirmed that the Equipment leased out are Under-Valued. Also affirmed that the transaction is with the related Parties as per Page 10 of the Annexure. Also stated that equipment leased has fixed consideration of Rupees Twenty Five Lakhs otherwise the market rent of the Equipment is much higher and for that purpose placed on record certain calculation to demonstrate that 269 Equipment could fetch per month rent and Rs7.6Cr p.a. As a consequence, considering the totality of the circumstances and evidence on record this application is on merits. Hence Order is hereby pronounced directing the Respondent Arkay Logistics Limited to surrender the possession of the Equipment with immediate effect to the Professional. If deem fit the Professional can give the outstanding amount yet to be recovered from the said party. With these directions MA 1037 of 2018 allowed.

3. The matter is adjourned to **12.11.2018.**

SD/-
M.K. SHRAWAT
Member (Judicial)

15.10.2018

HHS