

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I
(Special Bench)

MA 47/2020 In C.P. (IB) 3457/MB/2018

Under Section 7 of IBC, 2016

DSM Infocom Pvt Ltd

... Applicant

Vs

Trimax IT Infrastructure & Services Ltd
represented by its Resolution
Professional, Mr Avil Menezes

...Corporate Debtor

In the matter of:

Corporation Bank

...Financial Creditor

V/s

Trimax IT Infrastructure & Services Ltd
...Corporate Debtor

Order pronounced on 04th May 2020

Coram:

Shri B. S. V. Prakash Kumar, Acting President

Shri V Nallasenapathy, Member (Technical)

For the Applicant:

None Present

For the Resolution Professional:

Sr. Counsel Mr. Gaurav Joshi,
a/w Ms Pooja Mahajan, Mr
Mustafa Kachwala and Ms
Mahima Singh, i/b Kachwala
Misar & Co., Advocates

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. MA 47/2020 has been filed by DSM Infocom Pvt Ltd (DSM), seeking permission to submit Expression of Interest (EoI) and Resolution Plan.
2. None present on behalf of the applicant. By way of this application, DSM seeks permission to submit EoI and Resolution Plan for the Corporate Debtor. It is claimed that DSM became aware of EoI invitation on 15 December 2019 and is desirous of submitting a resolution plan which may ensure higher maximisation of value and prove more beneficial to the interest of the Corporate Debtor and its stakeholders.
3. The Counsel for the Resolution Professional (RP) submits that the application for approval of CoC-approved Resolution Plan was filed on 18th November 2019 i.e. long before filing of DSM's application;
4. The Counsel for the RP further submits that on 25th April 2019, Form G inviting Prospective Resolution Applicants (PRA) to submit EoI was published in various newspapers (namely, Economic Times (pan-India), Deccan Chronicle (Hyderabad), Times of India (Bengaluru), Loksatta (Maharashtra)). The Form G was also uploaded on the Corporate Debtor's website and on the IBBI website. The last date for submission of EoI was 10th May 2019. As per the EoI invitation, the RP has the right to accept or reject any EoI submitted after the stipulated last date, with CoC approval.

5. The RP further submits that this is not the case of a prospective resolution applicant who had participated in the CIRP of the Corporate Debtor. Rather, DSM, a competitor of the Corporate Debtor, had not even submitted any EoI during the CIRP period and approached this Adjudicating Authority after the approval of Resolution Plan by CoC. Cases in which submission of resolution plans have been accepted after the last date were those in which PRAs had expressed some kind of interest / participation while CIRP of the corporate debtor was on, and not after expiry of 270 days. The 270 days of CIRP expired on 18th November 2019. 330 days cannot be assumed to be available as a matter of course.
6. The Counsel for the RP further submits that the Corporate Debtor is a projects-based company, with various public sector undertakings (for e.g. banks, government undertakings, state transport undertakings etc.) forming part of its clientele. The nature of business of the Corporate Debtor is such that business continuity and assurance for clients is salient. It also entails sensitive information at data centres. Any further delay is likely to result in loss of various critical contracts involving public interest element, irreversible value erosion for the Corporate Debtor and possibly, withdrawal of the Resolution Applicant from the process, to the detriment of all stakeholders, including the creditors and over 3000 employees who depend on the Corporate Debtor for their livelihood
7. The Counsel for the RP also submitted that the application is highly belated and appears to be a dilatory tactic to derail the CIRP of the Corporate Debtor. Any further delay in the process is

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likely to end up scuttling the CIRP at the behest of a highly-belated entrant, whose *bona fides* are doubtful.

8. As per CIBIL Report, DSM is a wilful defaulter and hence, in any case, it is not eligible under Section 29A of the IBC to submit any resolution plan.
9. The Counsel for the RP submits that the Resolution Applicant, *viz.* Ebix Software India Pvt Ltd., whose Resolution Plan is now pending adjudication before this Adjudicating Authority, has fully participated in the CIRP of the Corporate Debtor and its Resolution Plan has been approved by 75.22% of voting shares of CoC. Along with the Resolution Plan, the Resolution Applicant has also submitted a performance bank guarantee of INR 50 Crores, which demonstrates its credentials and *bona fides*, contrary to that of DSM which had merely circulated a draft resolution plan at a highly belated stage i.e. when this Adjudicating Authority was already seized of the plan approval application
10. This Bench has considered the resolution plan filed by the successful Resolution Applicant under Section 30 of the Code and approved the same. In view of this, this application is dismissed.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

B.S.V. Prakash Kumar
Acting President

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I (Special Bench)

MA 2615/2019 In C.P. (IB) 3457/MB/2018

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

Ricoh India Ltd ... Applicant

Vs

Trimax IT Infrastructure & Service Pvt Ltd

... Respondent

In the matter of:

Corporation Bank ... Financial Creditor
V/s

Trimax IT Infrastructure & Services Ltd
...Corporate Debtor

Order pronounced on 04th May 2020

Coram:

Shri B. S. V. Prakash Kumar, Acting President

Shri V Nallasenapathy, Member (Technical)

For the Applicant:

Sr. Counsel Mr. Zal
Andhyarujina, a/w Mr Aurup
Dasgupta, Ms Sonam Ghiya &
ms Jinal Vani, i/b Jhangiani
Narula & Associates

For the Resolution Professional:

Sr. Counsel Mr. Gaurav Joshi,
a/w Ms Pooja Mahajan, Mr
Mustafa Kachwala and Ms
Mahima Singh, i/b Kachwala
Misar & Co., Advocates

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. MA 2615/2019 has been filed by Ricoh India Ltd under Section 60(5) of the Code, seeking declaration that INR 11,19,82,530/-

MA 2615/2019 In C.P. (IB) 3457/MB/2018

out of INR 11,48,53,877/- due to be released by E-Governance Uttar Pradesh (i.e. the customer) into the Axis Bank Account No. 914020004635893 belongs solely and exclusively to the applicant and also seeking directions to the Corporate Debtor to honour the terms and conditions of the Escrow Agreement dated 24 January 2014 by signing and executing and issuing instructions to Axis Bank to apportion the sum of INR 11,48,53,877/- to be released by the customer as per the terms and conditions of the said Escrow Agreement and to continue to do so for any future payments from the customer in relation to the project in question.

2. The application reveals that the Centre for E-Governance Uttar Pradesh awarded a tender to the Corporate Debtor wherein the Corporate Debtor was selected as System Integrator for the roll out of e-District Mission Mode Project covering 69 districts in the State of Uttar Pradesh. The Corporate Debtor sought to partner with the applicant for implementation and completion of the said project and entered into an Agreement on 26.11.2013 with the applicant. As per the terms of the Agreement, the Corporate Debtor opened an Escrow Account wherein all the payments made by e-Governance, Uttar Pradesh were deposited in the said Escrow Account. The Applicant and the Corporate Debtor were to give standing instruction to the Escrow Bank for transfer the funds to them as per their entitlement.
3. It is submitted that after the initiation of the CIRP, by the efforts of the Resolution Professional, the e-Governance project which was on hold for a long time was put back on track and the applicant and the Corporate Debtor received funds in terms of their entitlement as per the agreement.

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4. The Counsel for the Applicant relied on the judgment of the Hon'ble High Court of Delhi, in the case of *Deutsche Trustee Company Ltd vs. Tulip Telecom Ltd.* (2017 SCC OnLine Del 11012) wherein the operation of an Escrow Account was discussed. In the said judgement, a case decided on 16.2.2013, by United States Bankruptcy Court for the Northern District of Illinois Eastern Division viz. *Homer City Generation L.P vs. EME Homer City Generation L.P.*, Case No.12-49219, wherein the nature of Escrow Account was discussed and it was held that the money held in Escrow Account is not a property which vests in the trustee in bankruptcy.
5. In view of the said decision, we are of the view that the money in the Escrow account herein is not the exclusive property of the Corporate Debtor and it has to be shared by the Escrow participants in the agreed ratio. Hence, the Corporate Debtor is directed to honor the terms and conditions of the Escrow Agreement dated 24.1.2014 and pay Rs.11,19,82,530/- on release of amount by the e-Governance, Uttar Pradesh into Axis Bank Account No.914020004635893.
6. Accordingly, this application is allowed.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

B.S.V. Prakash Kumar
Acting President

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I
(Special Bench)

MA 3444/2019 In C.P. (IB) 3457/MB/2018

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

Systel Technology Services Pvt Ltd

... Applicant

Vs

Trimax IT Infrastructure & Service Pvt
Ltd, represented by its Resolution
Professional, Mr Avil Menezes

...

Respondent

In the matter of:

Corporation Bank

...Financial Creditor

V/s

Trimax IT Infrastructure & Services Ltd

...Corporate Debtor

Order pronounced on 04th May 2020

Coram:

Shri B. S. V. Prakash Kumar, Acting President

Shri V Nallasenapathy, Member (Technical)

For the Applicant: Mr. Aurup Dasgupta a/w Ms. Sonam Ghiya and
Ms. Jinal Vani, i/b Jhangiani Narula &
Associates, Advocates

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I (Special Bench)

MA 3444/2019 in CP (IB) 3457/NCLT/MB/2018

For the Respondent: Sr. Counsel Mr. Gaurav Joshi, a/w Ms Pooja Mahajan, Mr Mustafa Kachwala and Ms Mahima Singh, i/b Kachwala Misar & Co., Advocates

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. MA 3444/2019 has been filed by Systel Technologies Services Private Limited, under Section 60(5) of the Code, seeking direction against the Corporate Debtor to honor the terms and conditions of the Escrow Agreements dated 5 February 2014 and 14 June 2018 by signing and executing and issuing instructions to Kotak Mahindra Bank to apportion a sum of INR 40,51,866/- to the Applicant out of INR 48,18,124/- released by the customer, i.e. the Department of Information Technology and Communication, Government of Andhra Pradesh/Telangana (i.e. the customer) into the Kotak Mahindra Bank Account No. 8612504299 and also for a declaration that the said amount belongs solely and exclusively to the applicant.
2. The application reveals that APTS-ITE&C Department awarded a tender and entered into a Consortium Agreement with the Corporate Debtor and the applicant on 9.10.2013 for implementation, completion and operation and maintenance and revenue sharing of roll out of E-District, MMP in undivided Andhra Pradesh. After the bifurcation of the State, the said Department came to the Government of Telangana. The applicant submits that they have executed their part of work in terms of the Agreement and they are entitled to get their share of money credited to the Escrow Account in Kotak Mahindra Bank. It is also submitted that during the CIRP also the IRP

issued instruction for apportionment of the applicant's due and the same has been credited to the respective bank account of the applicant and the Corporate Debtor. It is submitted that after certain adjustments, presently a sum of Rs.40,51,866/- is available in the Escrow Account as their share of money receivable from the contract.

3. This Bench in a similar matter, i.e. MA No.2615/2019 in CP No.3457 of 2018 observed as below:

“The Counsel for the Applicant relied on the judgement of the Hon’ble High Court of Delhi, in the case of “Deutsche Trustee Company Ltd vs. Tulip Telecom Ltd.”,(2017 SCC OnLine Del 11012) wherein the operation of an Escrow Account was discussed. In the said judgement, a case decided on 16.2.2013, by United States Bankruptcy Court for the Northern District of Illinois Eastern Division viz. Homer City Generation L.P vs. EME Homer City Generation L.P., Case No.12-49219, wherein the nature of Escrow Account was discussed and it was held that the money held in Escrow Account is not a property which vests in the trustee in bankruptcy. In view of the said decision, we are of the view that the money in the Escrow account herein is not the exclusive property of the Corporate Debtor only and it has to be shared by the Escrow participants in the agreed ratio.”

4. The facts of the case in this application are similar to the facts in the abovesaid MA.
5. Hence, the Corporate Debtor is directed to honour the terms and conditions of the Escrow Agreement dated 5.2.2014 and 14.6.2018 by issuing instruction to Kotak Mahindra Bank Ltd to apportion a sum of Rs.40,51,866/- to the Applicant out of

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Rs.48,18,124/- released by the Department of Information
Technology and Communication, Govt of Telangana and
accordingly this application is allowed.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

B.S.V. Prakash Kumar
Acting President

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I
(Special Bench)

MA 3505/2019 in C.P. (IB) 3457/MB/2018

Under Regulation 12(2) of the IBBI (Insolvency Resolution Process
for Corporate Persons) Regulations, 2016

Commercial Taxes Department
Government of Rajasthan
... Applicant

Vs

Avil Menezes
Resolution Professional of
Trimax IT Infrastructure & Services Ltd
... Respondent

In the matter of:

Corporation Bank

...Financial Creditor

V/s

Trimax IT Infrastructure & Services Ltd
...Corporate Debtor

Order pronounced on 04th May 2020

Coram:

Shri B. S. V. Prakash Kumar, Acting President

Shri V Nallasenapathy, Member (Technical)

For the Applicant:

None Present

For the Resolution Professional:

Sr. Counsel Mr. Gaurav Joshi,
a/w Ms Pooja Mahajan, Mr
Mustafa Kachwala and Ms
Mahima Singh, i/b Kachwala
Misar & Co., Advocates

IN THE NATIONAL COMPANY LAW TRIBUNAL
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MA 3505/2019 in CP (IB) 3457/NCLT/MB/2018

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. MA 3505/2019 has been filed by Commercial Tax Department, Rajasthan regarding treatment of its claim. The application has been filed by the tax department seeking acceptance of its claim of INR 11.95 Crores (approx.)
2. None was present on behalf of the applicant. The Counsel for the RP submitted that when claim form (Form B) dated 23 July 2019 was received from the department, the same was examined against books and records of the Corporate Debtor. It came to light that the Corporate Debtor has contested the claim on various grounds before the jurisdictional and appellate authorities and the matters are yet to reach finality. Given the pending disputes in respect of the subject matter of the claim submitted by the department, the same could not be admitted by the RP and was categorized as 'amount disputed' in the list of creditors of the Corporate Debtor prepared under Regulation 13 of the CIRP Regulations. The list of creditors was prominently displayed on the website of Corporate Debtor.
3. The Counsel for the RP further submitted that there is no obligation under the Code or the CIRP Regulations to specifically inform each creditor about the status of the claims submitted by them. Further, at no point did the department write to the RP seeking inspection of list of creditors.
4. The RP without prejudice, further submitted that in light of the judgment of the Hon'ble Supreme Court in *Committee of*

IN THE NATIONAL COMPANY LAW TRIBUNAL
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MA 3505/2019 in CP (IB) 3457/NCLT/MB/2018

*Creditors of Essar Steel India Limited
Vs. Satish Kumar Gupta and Ors.(MANU/SC/1577/2019)* and

the fact that the department's claim forms the subject matter of pending disputes / legal proceedings, the RP is ready to admit the claim of the department at a notional value of INR 1, in which case, the claim so admitted will receive the treatment provided for other similarly situated claims under the CoC-approved resolution plan which is pending for approval by the Adjudicating Authority.

5. On going through the application and on hearing the submission of the Counsel for the RP, we are of the view that the action of the RP in admitting the claim for a notional value of INR 1 is in order and hence this application is dismissed.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

B.S.V. Prakash Kumar
Acting President

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I (Special Bench)

MA 3711/2019 In C.P. (IB) 3457/MB/2018

Under Section 30(6) read with Section 31 (1) of the Insolvency and
Bankruptcy Code, 2016

Avil Menezes

...Resolution Professional /
Applicant

In the matter of:

Corporation Bank

...Financial Creditor

V/s

Trimax IT Infrastructure & Services Ltd

...Corporate Debtor

Order pronounced on 04th May 2020

Coram:

Shri B. S. V. Prakash Kumar, Acting President

Shri V Nallasenapathy, Member (Technical)

For the Resolution Professional: Sr. Counsel Mr. Gaurav Joshi,
a/w Ms Pooja Mahajan, Mr
Mustafa Kachwala and Ms
Mahima Singh, i/b Kachwala
Misar & Co., Advocates

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. This Miscellaneous Application (MA) No. 3711/2019 is filed by Avil Menezes, Applicant- Resolution Professional, under section 30(6) of Insolvency and Bankruptcy Code, 2016 (I&B Code), seeking order for approval of the resolution plan, as approved by the members of Committee of Creditors (CoC) with 75.22% voting share, for resolution of the Corporate Debtor submitted by Ebix Software India Pvt Ltd.
2. This Adjudicating Authority by an order dated 21.2.2019, inC.P. (IB) 3457/MB/2018 admitted a petition against the Corporate Debtor u/s 9 of Code. The applicant herein was appointed as Resolution professional by an order of this Bench dated 22.4.2019.
3. The Resolution Professional prepared the Information Memorandum as required under Section 29 of the Code read with Regulation 36 of the CIRP Regulations and placed before the CoC.
4. On 8.4.2019, in terms of Regulation 27 of the CIRP Regulations, the RP appointed two Registered Valuers, namely RNC & CO and GAA Advisory LLP, to determine the fair value and liquidation value in accordance with Regulation 35 of the CIRP Regulations.
5. The Resolution Professional invited Expression of Interest (EoI) vide publication dated 25.4.2019 and the last date for submission of the EoI was 10.5.2019. Pursuant to the said publication, the RP received ten EOIs by 10.5.2019 and two

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EOIs after the stipulated last date for submission. After the due diligence based on the materials on record, as required under Regulation 36A(8) of the CIRP Regulations, the provisional list of eligible Prospective Resolution Applicants (PRAs) was placed before the CoC in the 3rdCoC meeting held on 17.5.2019. The CoC voted and approved the conditions pertaining to bid bond guarantee and performance security as well as the last date for submission of the resolution plan and evaluation matrix. A copy of the minutes of the said CoC meeting is annexed with the application as Exhibit R.

6. On 29.5.2019, the RP received another EOI from a PRA. With a view to maximizing the value for stakeholder, an approval was sought from the CoC, for inclusion of this PRA in the final list of PRAs, which was approved by the CoC with 76.67% voting. The last date for submission of the resolution plan was extended to 8.7.2019.
7. The RP received only one resolution plan for the Corporate Debtor from Ebix Software India Pvt Ltd on 8.7.2019. On 5th August, 2019, an updated resolution plan with various changes was received from the said Resolution Applicant, which was circulated to the CoC Members.
8. The CIRP period for the Corporate Debtor was extended by 90 days vide order of this Tribunal dated 19.8.2019.
9. Since there was significant difference between the valuation made by the said two Registered Valuers, the RP on 16.8.2019, appointed another registered valuer, namely Mr. Anil Bhaskar Pai Kakode in terms of Regulation 35(1)(b) of the CIRP

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Regulations. The average of the two closest estimates were used for estimating the fair value and liquidation value of the Corporate Debtor, in accordance with Regulation 35(1) (c) of the CIRP Regulations. The liquidation value of the corporate debtor as arrived at by the registered valuers appointed by Resolution Professional is ₹103.82 crores (Rupees One Hundred Three Crores and Eighty ThreeLaks Only) and the fair value is ₹197.69 crores (Rupees One Hundred and Ninety Seven Crores and Sixty Nine Lakhs Only).

10. After multiple iterations, the RP received the final signed Resolution Plan from the Resolution Applicant on 17.10.2019 which was shared by the RP with the CoC members. In the 10thCoC meeting held on 24.10.2019, detailed discussions were held on various aspects/terms of the final resolution plan and its feasibility and viability. Discussions were also held on the evaluation of the Resolution Plan submitted by the Resolution Applicant as per the Evaluation Matrix. Thereafter, in the said meeting the members discussed and deliberated on the manner of distribution of proceeds as envisaged in the Resolution Plan as per Section 30(4) of the Code (as amended by Insolvency and Bankruptcy (Amendment) Act, 2019.
11. In the 11thCoC meeting held on 8.11.2019, the RP and his team presented the estimated proceeds under the Resolution Plan to be distributed among the CoC members and highlighted that the methodology of distribution of proceeds under the Resolution Plan was deliberated in detail in the last CoC meeting and approved by majority vote and the RP requested the CoC members to approve the resolution plan. E-voting was

MA 3711/2019 In C.P. (IB) 3457/MB/2018

conducted from 10.11.2019 till 14.11.2019 and the resolution plan submitted by Ebix Software India Pvt Ltd was approved with 75.22% voting share.

12. Post completion of e-voting process, the RP received an email from Axis Bank stating as follows:

“Please refer to the captioned plan wrt Trimax IT Infrastructure and Services Ltd. and the e-voting conducted today, i.e. 14.11.2019. We had voted as dissent as our approval from senior management was pending due to pending clarifications on the plan. Post receipt of clarification on the bank guarantee protection from the resolution professional, we request you to consider our vote as a Assent on the plan and take necessary steps to effect the same. Further, we request you to ignore our vote casted through online voting portal.”

13. The request of the Axis Bank was put for e-voting in the 12thCoC meeting held on 15.11.2019, which was not approved with the requisite minimum voting share of CoC. An application (MA No.3950 of 2019) filed by Axis Bank in this regard has been dismissed by this Bench by a separate order.
14. Further, the RP issued a Letter of Intent (LOI) to the Resolution Applicant. The Resolution Applicant was also requested to submit the Performance Bank Guarantee (PBG) of Rs.50 crores by 16.11.2019.
15. It is submitted by the Counsel for the RP that the Resolution Applicant has submitted the accepted LOI and the required PBG of Rs.50 crores.

16. The Resolution Professional has submitted his Form H under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Resolution Professional has certified that the resolution plan complies with all the provisions of the I&B Code, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
17. Mr. Vikas Verma, Director of the Resolution Applicant had submitted an Affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The Resolution Professional has further certified that the said Resolution Plan has been approved by the CoC with 75.22% voting share after considering its feasibility and viability and other requirements mandated by the Code and the CIRP Regulations.
18. The Resolution Professional filed an affidavit on 4.12.2019 stating that consequent to the issue of Letter of Intent by the Applicant, the Resolution Applicant provided a Bank Guarantee for Rs.50 crores issued by ICICI Bank Ltd., Noida (BG No.0031BGFD014620, dated 18.11.2019).
19. The Resolution Plan included a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the I&B Code and Regulations made thereunder.

Salient features of the Resolution Plan:

20. The Resolution Applicant proposed to acquire 100% of the Corporate Debtor for INR 75 crores to be infused within 30 days of the effective date, i.e. approval of the Resolution Plan by this Adjudicating Authority.
21. The Resolution Plan provides that this Resolution Plan is valid for a term till all the payments are made to all the stakeholders under the terms and conditions of this Resolution Plan and the obligations of the Resolution Applicant to implement the Resolution Plan shall become effective only from the Effective date. The Resolution provides that this plan shall become binding on the Corporate Debtor and its employees, members, creditors, guarantors, Central Government, any State Government, any local authority and other stakeholders involved in this Resolution Plan on the Effective Date. The Resolution Plan defines “Effective Date” as the date of approval of this Resolution Plan by the Hon’ble National Company Law Tribunal, Mumbai.
22. The Resolution Applicant proposes following payments to various stakeholders:

No	Particulars	Admitted Amt (Rs.)	Proposed distribution from upfront Fund infusion (Rs.)	Upfront payment made (as % of admitted claims)	Remarks
1	CIRP Costs	NA	as per Remarks column	100%	CIRP Costs paid from the cash flow of the Corporate Debtor prior to unpaid CIRP costs, same can be paid in

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No	Particulars	Admitted Amt (Rs.)	Proposed distribution from upfront Fund infusion (Rs.)	Upfront payment made (as % of admitted claims)	Remarks
					priority from the upfront amount allocated towards Financial Creditors
2	Operational Creditors				
	Employees	122,664,742	6,000,000	4.89%	
	Directors (Suspended)	11,054,136	-		
	Statutory Authorities	119,917,792	5,850,000	4.88%	
	Other Operational Creditors	246,264,634	12,000,000	4.87%	
3	Financial Creditors	17,085,220,835	726,150,000	4.25%	Resolution Applicant has proposed additional payouts as mentioned in Para 7.3.5.7. In addition, Financial Creditors may also realise an additional amount from Quess Corp Ltd for transfer of shareholding of the Corporate Debtor in JV to Quess Corp Ltd
4.	Other Creditors				
	JV + Outsourced Partners	1,596,781,481	-		
	TOTAL	19,181,903,620	750,000,000		

23. The Resolution Plan proposes for appointment of Monitoring Committee, constituting of 2 representatives of Financial Creditors and 2 representatives of Resolution Applicant in consultation with CoC.
24. The Resolution Plan provides that financial creditors who do not vote in favour of the Resolution Plan shall be paid at least the amount to be paid to such creditors in accordance with Section 53 (1) in the event of a liquidation of the Corporate Debtor.
25. It has been provided that the Resolution Plan addresses the interests of all stakeholders including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees, government bodies and other stakeholders of the Corporate Debtor as contemplated by the Code. A 'Review of Interest of all stakeholders' is also provided in the Resolution Plan. The Resolution Plan further states that the Resolution Applicant has provided for appropriate consideration for protecting the interests of other stakeholders such as employees, operational creditors, government dues, non-promoter shareholders, in the Resolution Plan.
26. The Resolution Plan provides for proposed board of directors, new management structure, management and control of the Corporate Debtor after its takeover by Resolution Applicant.
27. On perusal of the Resolution Plan, we find that the resolution plan has necessary provisions for its effective implementation.
28. Having gone through the resolution plan in detail it is pertinent to study the provisions of the Code and CIRP regulations to see

whether the requirements of the code and regulations were fulfilled.

A) Section 30 of the Code provides as below:

“(1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

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(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority”

B) Section 31 of the Code provides as below:

“(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),— (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and (b) the resolution professional shall forward all records relating to the conduct of

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the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”

- C) *Regulation 38 - Mandatory contents of the resolution plan:*
- (1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.*
 - (1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.*
 - (2) A resolution plan shall provide:*
 - (a) the term of the plan and its implementation schedule;*
 - (b) the management and control of the business of the corporate debtor during its term; and*
 - (c) adequate means for supervising its implementation.*
 - (3) A resolution plan shall demonstrate that –*
 - (a) it addresses the cause of default;*
 - (b) it is feasible and viable;*
 - (c) it has provisions for its effective implementation;*
 - (d) it has provisions for approvals required and the timeline for the same; and*
 - (e) the resolution applicant has the capability to implement the resolution plan.*

- D) *Regulation 39 - Approval of resolution plan:*
- (1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with*

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(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;

(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

(1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.

(2) [The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-

(a) preferential transactions under section 43;

(b) undervalued transactions under section 45;

(c) extortionate credit transactions under section 50; and

(d) fraudulent transactions under section 66,

(3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit: Provided that the committee shall record the reasons for approving or rejecting a resolution plan.]

(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule.

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(7) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.

(8) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.

(9) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.

(10) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.”

29. As discussed supra by virtue of mandatory contents of resolution plan, the same is in accordance with Section 30 and 31 of the Code, and also complies with the requirement of the Regulations 38 and 39 of CIRP Regulations.

30. The resolution applicant has sought certain reliefs and concessions in the resolution plan. The said relief and concessions are mentioned in Para No. 27 (a) to (r) of the Resolution Plan annexed to the application. This bench is not

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inclined to allow any of the said reliefs and concessions prayed by the Resolution Applicant. Therefore, the resolution applicant may apply to the relevant regulatory authorities for said reliefs and concessions and the relevant authorities may consider it as per relevant applicable laws.

31. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable laws for the time being in force.
32. It is made clear that the resolution applicant shall takeover the Corporate Debtor with all its assets and liabilities as per terms of the approved Resolution Plan.
33. The Resolution Applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.
34. Given the above observations, we approve the resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.
35. The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

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36. The Resolution Plan is approved as per indicated above, under section 31(1) of I&B Code. The MA 3711/2019 is accordingly allowed and disposed of.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

B.S.V. Prakash Kumar
Acting President

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I
(Special Bench)

MA 3950/2019 In C.P. (IB) 3457/MB/2018

Under Section 65 of the Insolvency and Bankruptcy Code, 2016

Axis Bank Ltd ... Applicant

Versus

Trimax IT Infrastructure & Services Ltd
represented by its Resolution
Professional, Mr Avil Menezes

In the matter of:

Corporation Bank

...Financial Creditor

V/s

Trimax IT Infrastructure & Services Ltd
...Corporate Debtor

Order pronounced on 04th May 2020

Coram:

Shri B. S. V. Prakash Kumar, Acting President

Shri V Nallasenapathy, Member (Technical)

For the Applicant:

Adv. Savita Nangare, i/b Law
Focus

For the Resolution Professional:

Sr. Counsel Mr. Gaurav Joshi,
a/w Ms Pooja Mahajan, Mr
Mustafa Kachwala and Ms
Mahima Singh, i/b Kachwala
Misar & Co., Advocates

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I (Special Bench)

MA 3950/2019 in CP (IB) 3457/NCLT/MB/2018

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. MA 3950/2019 has been filed by Axis Bank for a direction to the resolution Professional to consider change in vote of the applicant from dissent to assent on the resolution plan.
2. The applicant submits that in the 6th CoC meeting, the resolution plan submitted by the Resolution Applicant was discussed and one essential point raised by the Resolution Applicant was that he sought relief under the plan for continuing uninvoked bank guarantees of Rs.56.79 crores for the ongoing projects of the Corporate Debtor without recourse to the Resolution Applicant if such bank guarantees gets invoked by the end customers in future. Thereafter, the Resolution Applicant submitted the revised resolution plan on 14.8.2019 wherein the Resolution Applicant stated that he expects the continuity of uninvoked bank guarantees by the financial Creditors subject to the resolution applicant providing counter bank guarantees through its bankers of an amount equivalent to the amount of Bank Guarantees in favour of the Bank Guarantee Lenders. However, it is also stated that the Resolution Applicant shall not be held liable for any past transactions on the continuing Bank Guarantee if those bank guarantees gets invoked in future. Finally, the Resolution Applicant submitted the revised resolution plan on 28.8.2019 and the same was approved by the CoC in the 11th meeting held on 8.11.2019.
3. The applicant submits that it was not clear on the issue of protection of uninvoked bank guarantees as the applicant has

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exposure to the extent of 11.87 crores in respect of uninvoked bank guarantees. As per the resolution plan, the applicant would recover an amount of Rs.4.74 crores in the event the applicant assents to the resolution plan. In view of the future liability of Rs.11.87 crores that may arise in case of invocation of the bank guarantees, the applicant bank voted in dissent to the resolution plan in the e-voting.

4. The applicant further submits that after carefully going through the final resolution plan, he found that the resolution applicant is protecting the uninvoked bank guarantees from future invocation and therefore, immediately upon such realization, conveyed its assent to the resolution plan, vide email at 11:37 p.m. on 14.11.2019.
5. The CoC in the 12th CoC meeting considered the applicant's change of vote and after due deliberations, the same was put for voting as a new agenda. Some of the CoC members stated that they have to take approval of their internal committees for the above said new agenda. Hence the voting on the said agenda was held on 16.11.2019 and only 48.5% of CoC members have voted in favour of the said agenda and 8.33% of CoC members voted against the agenda for applicant's change in vote. 43.17% of CoC members abstain from voting. Hence the applicant's change in vote from dissent to assent on the resolution plan was not approved. Now the applicant is before us seeking a direction against the resolution professional to consider the change in voting of the applicant from dissent to assent on the resolution plan.

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6. We feel that the issue raised by the applicant is squarely covered by the decision of the Hon'ble NCLAT in the case of "*Mr. Sharad Sanghi vs. Ms. Vandana Garg & Ors., Company Appeal (AT) (Insolvency) No.461 of 2018 [MANU/NL/0116/2019]*" wherein it was held that in the matter of change in voting by the member can be decided by CoC which is the final decision making authority in accepting or rejecting the resolution plan.
7. In view of this, we are unable to accept the contentions of the applicant. Hence this application is dismissed.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

B.S.V. Prakash Kumar
Acting President