NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 798 of 2021

[Arising out of orders dated 04.05.2020 in MA 3711/2019 in C.P. (IB) 3457/MB/2018 passed by the Ld. Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I (Special Bench)]

IN THE MATTER OF:

Delhi Transport Corporation
Through its Standing Counsel:
Chamber No. 146, Block I, High Court of Delhi, New Delhi
61, Sector-15, Part I, Gurugram, Haryana.
Email: manishvashisht.dtc@gmail.com/
Manishvashisht1973@gmail.com
M: 9013980691 **...... Appellant.**

Versus

1. **M/s Trimax IT Infrastructure Services Ltd.**
   Through its authorized representative:
   Mr. Rajat Sethi
   Office at:
   Suraksha Ace, 6th floor, 34/3,
   Andheri Kulra Road, Chakala, JB Nagar,
   Andheri (East), Mumbai, Maharashtra. **....... Respondent No. 1.**
2. **Mr. Avil Menezes,**
   Resolution Professional
   Unit 101, 1st floor, LD building,
   Mehra Estate, LBS Road, Vikhroli (W),
   Mumbai, Maharashtra-400079. **....... Respondent No. 2.**

3. M/s Ebix Cash Pvt. Ltd.
Registered Office at:
122 & 123, NSEZ, Phase II,
Noida, Uttar Pradesh-201305. **....... Respondent No. 3.**

Present:

For Appellant:	**Mr. Aviral Saxena and Mr. Dikanj Mishra, Advocates.**
For Respondents:	**Mr. Gautam Swarup, Mr. Kartikeya Jaiswal and Mr. Gunjan Jindal, Advocates.**

J U D G M E N T

(...... August, 2022)

Justice Anant Bijay Singh;

This Appeal has been preferred by the Appellant being aggrieved and dissatisfied by the order dated 04.05.2020 in MA 3711/2019 in C.P. (IB) 3457/MB/2018 passed by the Ld. Adjudicating Authority [National Company Law Tribunal, Mumbai Bench-I (Special Bench)] whereby and where under the Adjudicating Authority passed the following orders:

> ***"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.*

> ***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.*"

2. The facts giving rise to this Appeal are as follows:

i) The Appellant issued Tender No. DTC/AFCS/303 for Design, Develop, Build, Install, Maintain, Operate and Transfer of Automated Fare Collection System (AFCS) for its buses on 06.01.2015. The Respondent No. 1 – M/s Trimax IT Infrastructure & Services Ltd. was issued a Letter of Acceptance on 01.09.2015 by the Appellant.

ii) On 30.09.2015, a work order was issued in favour of the Respondent No. 1 – M/s Trimax IT Infrastructure 7 Services Ltd. The objective of the work order was to achieve an effective, reliable, integrated state of the art AFSC system for the fleet of buses of the Appellant. The scope of work was defined in Clause 4 of the Contract. The contract was initially for a period of Six (06) years form the CoD with a provision for extension by another one year on the agreed rates as per Clauses 3.2 and 3.15 of the Contract. The minimum guaranteed transactions of Rs. 7.50 Lakhs per day were agreed to be applicable and could be used for payment purposes only after Date of Commercial Operation across all the 45 depots in Delhi. The Respondent No. 1 was to carry out the work, provide the services and complete the supply as per the requirements, specifications and standards laid out within the stipulated time. Time was essence of the Contract. On account of delay on part of the Respondent No. 1, the Appellant was entitled to claim liquidated damages apart from other legal remedies available to it. The parties to the contract agreed that the contract would be governed and interpreted in accordance with the laws of India.

iii) Further, on the same day, i.e. 30.09.2015, an agreement was signed between the Appellant and Respondent No. 1 - M/s Trimax IT Infrastructure & Services Ltd. The pre-estimated damages were agreed to be levied in terms of Clause 9.5 of the contract besides agreeing to other terms and conditions as laid down in the contract. The functional requirements of the contract were elaborated in Clause 11.2, Key requirements in 11.6 and the performance requirements were set out in Clauses 11.8 and 11.9.

iv) From June 2016 to June 2019, the Respondent No. 1, on account of various deficiencies, was levied with pre-estimated damages to the tune of Rs. 91 Crores. The pre-estimated damages were prepared and compiled on the basis of calculations and billing details provided by each of the 38 deports of the Appellants. Time to time, Show Cause Notice in respect of submitted invoices were also issued to Respondent No. 1 by the concerned deports of the Appellant Corporation.

v) The Project kick off start date commenced on 12.10.2015. User Acceptance Test was conducted in two pilot projects on 12.05.2016. The roll out period in all deports of the Appellant commenced from May 2016 to October 2016. Go-live period in all deports of the Appellant was during the period of August 2016 to June 2017.

vi) On 01.12.2017, the Commercial Date of operation commenced, from which, the period of contract was for a period of 6 years. In view of the penalty imposed as per Service Level Agreement on the Respondent No. 1, no payment was made to it after August 2018. However, till then, Depot wise total payment of Rs. 3.26 Crores was already made to the Respondent No. 1 by the Appellant.

vii) A proposal from the respondent No. 1 was received on 26.11.2018 for replacement of existing ETMs with new-age ETMs and Mobile Application based ticketing & Daily Passes in buses of the Appellant Corporation. On 21.12.2018, a approval was granted by the Appellant Corporation for acceptance of said Proposal from the Respondent No. 1.

viii) That preliminary Notice dated 23.01.2019 was issued against the Respondent No. 1 by the Appellant Corporation for low performance and pending works. On 21.02.2019, the Ld. Adjudicating Authority admitted a petition under Section 7 of the Code, which was filed by a Financial Creditor namely Corporation Bank against the Corporate debtor M/s Trimex IT Infrastructure Service Ltd. (Respondent No. 1 herein). The amount claimed to be default was Rs. 84,94,87,361.06/- The Adjudicating Authority took note of the admission of liability which was made by the Corporate Debtor. Accordingly, the Adjudicating Authority passed a Moratorium and appointed Mr. Krishna Chamdia as an Interim Resolution Professional (IRP).

ix) From time to time, Show Cause Notice in respect of submitted invoices were also issued to Respondent No. 1 by concerned deports of the Appellant. On 08.04.2019, the Resolution Professional/ Respondent No. 2 appointed two Registered Valuers namely RNC & Company and GAA Advisory, LLP to determine the fair value and liquidation value in accordance with Regulation

35 of CIRP Regulations. Thereafter, on 22.04.2019, the Ld. Adjudicating Authority appointed Mr. Avil Menezes as the Resolution professional in place of Mr. Krishna Chamdia.

x) On 29.07.2019, the Respondent No. 1, despite the appointment of Resolution Professional / Respondent No. 2, made representations to the Appellant requesting it to provide the penalty details. There was a significant difference between the valuation of the two valuers appointed as stated above, another Valuer Mr. Anil Bhaskar was appointed on 16.08.2019. The liquidation value of the Corporate Debtor was arrived at Rs. 103.82 Crores and the fair value at Rs. 197.69 Crores. On 04.10.2019, another similar request was made by the Respondent No. 1 with the Appellant for providing the penalty details.

xi) Further, on 17.10.2019, a Resolution Plan was filed by the Successful Resolution Applicant /Respondent No. 3 namely M/s Ebix Software India Pvt. Ltd. and on 08.01.2020, the Resolution Professional/Respondent No. 2 was informed about penalty of Rs. 91 crores and the Respondent No. 2 was requested to take necessary action so that the Appellant could be paid the said outstanding amount.

xii) Further, on 08.01.2020, the Appellant informed the Resolution Professional that 135 bills of some deports are yet to be received and ensure the payment of amount to the Appellant. On 09.01.2020, the Respondent No. 2, for the first time, gave a preliminary response to the letter of the Appellant dated 08.01.2020 and alleged that the Respondent No. 1 had submitted invoices to the Appellant on monthly basis and as against pending 135 invoices, 85 invoices were submitted. The Resolution Professional conveyed tht all the invoices were being re-submitted. The Respondent No. 2, in complete ignorance of all the books of accounts, letter addressed to the Respondent No. 1 by the Appellant and other relevant material which he would have perused and taken custody of in terms of the IBC, as amended, alleged that the Appellant has not substantiated the basis of its claim of Rs 91 crores and desired date-wise, depot-wise, month-wise and Service Level Agreement parameter-wise detail for the complete penalty of Rs. 91 crores.

xiii) The Respondent No. 1 filed petition on 23.01.2020 under Section 9 of the Arbitration & Conciliation Act before the Court of District Judge, Commercial, Tis Hazari Courts, Delhi, praying therein that the Appellant be injuncted from encasing the bank guarantee of Rs. 2 Crores which was tendered to the Appellant on 08.09.2015 in light of the Letter of Acceptance. It is pertinent to submit here that the Moratorium period was in place but for some strange reasons, the Resolution Professional did not prefer any petition and instead, the petition was signed and filed by the Officials/Directors of the Corporate Debtor/respondent No. 1.

xiv) The Respondent No. 1 on 24.01.2020 addressed a communication alleging misrepresentation, incorrect disclosure, non-adherence to compliance of issuance of manual ticket, non-adherence to payment terms, non-deployment of date centre, etc. against the Appellant and informed the Appellant that it would not be in a position to run the project in terms of the agreement dated 30.09.2015. The requisite information was sent to the

Respondent No. 2 with copies to other office-bearers of the Respondent No. 1 by the Appellant on 27.01.2020. The Appellant, vide its representation dated 28.01.2020, replied to the misconceived letter dated 24.01.2020 and reminded both the respondents that the Respondent No. 1 could not be allowed to withdraw from the agreement/contract unilaterally.

xv) The Appellant, on 26.02.2020, yet again issued communication pursuant to its previous letter dated 28.01.2020. The Appellant cleared its stand on reasons for levying damages and also apprised the Resolution Professional that a payment of Rs. 3.26 Crores was already made to the Respondent No. 1.

xvi) The Ld. Adjudicating Authority, vide its common Judgment and order dated 04.05.2020, allowed a Miscellaneous Application No. 3711 of 2019 which was filed by the Respondent No. 2 under Section 30(6) of the IBC seeking approval of the Resolution Plan. Hence this Appeal.

3. The Ld. Counsel for the Appellant during the course of argument and in his memo of Appeal submitted that the Ld. Adjudicating authority failed to appreciate that the Resolution Plan submitted by the Respondent No. 2 for approval was contrary to the express provisions of the Code and the regulation therein.

4. It is further submitted that the Ld. Adjudicating Authority failed to appreciate that the Respondent No. 2 acted ion material illegality and irregularity while submitting the Resolution Plan in terms of Section 30(6) of the Code.

5. It is further submitted that the Ld. Adjudicating Authority failed to appreciate that even after being in complete control over all the documents and Management of Affairs of the Respondent No. 1, the Respondent No. 2 has completely over-looked the amounts liable to be paid to the Appellant by the Respondent No. 1 and the non-inclusion of such heavy amounts in the Resolution Plan could not have gone unnoticed under any circumstances.

6. It is further submitted that the Ld. Adjudicating Authority has also failed to appreciate that the Appellant, even after being one of the largest 18 Operational Creditors, was neither informed about constitution of nor included in the Committee of Creditors. Based on these grounds the impugned order is fit to be set aside and the Appeal be allowed.

7. The Ld. Counsel for the Respondents during the course of argument submits that the Resolution Plan was approved by the Adjudicating Authority, therefore, there is no merit in the Appeal, the Appeal is fit to be dismissed.

8. After hearing the Ld. Counsel for the parties and hearing the arguments and also considering the Judgment passed by the Hon'ble Supreme Court in the case of ***"Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited & Ors."*** Reported in MANU/SC/0273/2021, wherein, the Hon'ble Supreme Court of India has held as under:-

> ***"95.*** *In the result, we answer the questions framed by us as under:*
>
> *(i) That once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31,*

the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval Under Section 31 could be continued."

9. This appeal is covered by the aforesaid judgement. In this view of the matter, we have found that the impugned order dated 04.05.2020 passed by the Ld. Adjudicating Authority [National Company Law Tribunal, Mumbai Bench-I (Special Bench)] in MA 3711/2019 in C.P. (IB) 3457/MB/2018 is hereby affirmed. There is no merit in the instant Appeal, the Appeal is hereby dismissed. No order as to costs.

10. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Ld. Adjudicating Authority [National Company Law Tribunal, Mumbai Bench-I (Special Bench)], forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

New Delhi

18th August, 2022

R. Nath.