

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**  
**COURT III**

107. Company Appeal/42/2023 I.A. 1335/2023 I.A. 3450/2022  
I.A. 2783/2022 I.A. 2540/2022 I.A. 2185/2022 I.A. 1855/2022  
I.A. 1850/2022 I.A. 1816/2022 I.A. 1695/2022 I.A. 1314/2022  
I.A. 708/2022 I.A. 2687/2021 I.A. 2654/2021 I.A. 1749/2021  
I.A. 799/2020 I.A. 795/2020 IN  
C.P.(IB)-2640(MB)/2019

CORAM: MS. LAKSHMI GURUNG, MEMBER (J)  
SHRI. CHARANJEET SINGH GULATI, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **13.09.2023**

NAME OF THE PARTIES: Rattan India Finance Pvt Ltd

V/s.

Cox & Kings Ltd.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

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**ORDER**

Adv. Payoja Gandhi, Counsel appearing for the Applicant in Company Appeal 42/2023, Adv. Ameya Gokhale a/w Adv. Bryan Pillai i/b Shardul Amarchand Mangaldas & Co., Counsel appearing for the Applicant in I.A. 2185/2022, Adv. Pratik Jhaveri a/w Samkit Jain i/b P & A Legal, Counsel appearing for the Respondent in I.A. 1850/2022, Adv. Sumit P. Counsel appearing for the Respondent in I.A. 1855/2022, Adv. Prakash Shinde i/b MDP & Partners, Counsel appearing for the Respondent in I.A. 1335/2023, Adv. Jasmine Dixit i/b Adv. Mahesh R., Counsel appearing for the Applicant in I.A. 3450/2022, Adv. Swapnil Gupte a/w Adv. Akash Manwani i/b ELP, Counsel appearing for the Respondent in I.A. 1816/2022, Adv. Nausher Kohli a/w Adv. Pulkitesh Dutt Tiwari & Adv. Shruti Singhai i/b Menon & Mankava, Counsel appearing for the Liquidator in CP, Adv. Ashish Mehta a/w Adv. Aarya More i/b ELA, Counsel appearing for the Respondent No. 3 in I.A. 1314/2022, Adv. Krushika Udeshi i/b Agarwal & Dhanuka Legal, Counsel appearing for the Respondent

Nos. 1 & 2 in I.A. 2654/2021, Adv. Yuvraj Singh a/w Umang T. i/b Desai Diwanji, Counsel appearing for the Respondent No. 7 in I.A. 1749/2021, Adv. Manoj Shirsat a/w Adv. A. Wadhwa, Adv. Y. Jain, Adv. Swapan Pradhan, Counsel appearing for the Respondent in I.A. 2684/2021 are present.

**Company Appeal 42/2023**

Counsel appearing for the Liquidator submits that his reply is ready and he will file in due course of day by serving an advance copy to the other side.

List this I.A. on **28.11.2023**.

**I.A. 1335/2023**

This is an application filed against the Axis Bank and Bank of India. Reply of the Axis bank is on record. The Counsel for the Applicant states that they are unable to serve Bank of India and are not pressing any relief against Bank of India. Heard the matter at some length after some time Counsel for the Applicant seeks to amend the Application as it was noticed that GST is necessary party in the present application.

List this I.A. on **01.11.2023**.

**I.A. 3450/2022**

Counsel for the Liquidator seeks two weeks' time to file reply. Let the same be done by serving the advance copy to the other side.

List this I.A. on **28.11.2023**.

**I.A. 2783/2022**

The Counsel for the DGFT/Respondent is present and seeks four weeks' time to file reply. Let the same be done by serving the advance copy to the other side.

List this I.A. on **01.11.2023**.

**I.A. 2540/2022**

This is an application filed by the Applicant for seeking following reliefs;

- (a) Pass an order allowing the Applicant to modify the List of Stakeholders already filed with this Hon'ble Tribunal on 11<sup>th</sup> March 2022, to include the stakeholders whose claims have been verified till 17<sup>th</sup> August 2022 as per the updated list annexure hereto and marked Exhibit 'F' and carry out necessary consequential amendments to the constitution of the Stakeholders' Consultation Committee, if any;*
- (b) For such other and further reliefs as this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the present case.*

In terms of Exhibit 'A' attached to the additional affidavit filed on 23.02.2023 the above I.A. is **allowed** and stands **disposed of**.

**I.A. 2185/2022**

This is an application filed by Operational Creditor against the order of the Liquidator rejecting his claim.

Heard both the parties and perused the record.

Out of the total claim of Rs. 1,63,95,859.00 an amount of Rs. 27 Lakhs only has been admitted by the Liquidator and balance claim of Rs. 1,33,66,000.00 was rejected on the ground that only Rs. 27 Lakhs was prior to the commencement of the CIRP.

Admittedly, the rejected amount of Rs. 1,33,66,000.00 was incurred during the CIRP period towards essential services. The Counsel for the Liquidator submits that the Liquidator has made sufficient provision in the Corporate Insolvency Resolution Process cost of the Corporate Debtor to account for the applicant's claim.

In view of the same let the applicant file his remaining claim before Liquidator who shall consider the same in accordance with the law.

In view of the same I.A. is **disposed of**.

**I.A. 1850/2022**

Counsel appearing for the Respondent/Air India Limited seeks time to file reply within three weeks. Two weeks' time is granted. Counsel for the Respondent shall file reply within two weeks by serving the advance copy to other side.

List this I.A. on **07.11.2023**.

**I.A. 1855/2022**

This is an application filed by the Liquidator seeking directions against the Etihad Airways PJSC to pay an amount of Rs. 1.69 Crores to the Corporate Debtor towards outstanding dues. The reply filed by the Respondent is on record. As per the reply filed by the Respondent it is submitted that they have already settled the legitimate dues payable to the Cox & Kings Ltd.

The relevant paras of reply are extracted hereunder:

6. *I say that the performance linked bonus was payable subject to Cox & Kings achieving the necessary targets as enumerated in the agreements entered into and this respondent has already settled the legitimate dues payable to Cox & Kings much before any order of winding up of Cox & Kings was passed by this Hon'ble Tribunal and the application is also well aware of the same, despite which has made the present Application with malafide intentions in order to claim monies from this respondent which this respondent has already paid to Cox & Kings.*
7. *I say that the performance linked bonus is payable subjecting to achieving the necessary targets as set forth in the agreements entered into between the respondent and Cox and Kings and not on based on Sales. I say that if Cox & Kings did not achieve the targets, no payment could be made. The relevant extract for performance incentives as per the agreements entered into reads as under: -*

**4. PERFORMANCE INCENTIVES**

***In consideration for the Travel Agency and Travel Agency Group designating and promoting Etihad as a preferred airline and subject to achieving the targets as set out in Schedule 2, Etihad shall provide the Travel Agency incentive payment as per part 2 of Schedule 2.***

8. *I say that whatever was due to Cox & Kings under performance linked bonus was already paid and settled and the respondent has already confirmed transmission of such eligible payments via Billing and settlement Plan (BSP), settlement channels between the airline and travel agents, which clearly indicates that Cox and Kings have already received the payments.*

However, the Counsel for the Liquidator states that he does not have details of the payment as well as flown data. The Respondent is directed to provide the UTR details, Payment details through BSP and flown Data. Let the details be provided within three weeks.

List this I.A. on **07.11.2023**.

**I.A. 1816/2022**

Pleadings are completed in the above Interlocutory Application.

List this I.A. on **07.11.2023**.

**I.A.1695/2022**

None appeared for the Applicant. List this I.A. on **28.11.2023** for appearance of the Applicant/Dismissal of I.A.

**I.A. 1314/2022**

The Counsel for the Respondent No. 3 is present and seeks time to file reply. Let the same be done within three weeks by serving an advance copy to the other side.

It is observed that notice to Respondent No.1 has not been served. The Counsel for the Applicant undertakes to send the notice on fresh correct address.

Despite service none appeared for the Respondent No. 2. One last and final opportunity is granted to Respondent No.2 to file the reply within two weeks after serving the copy to the other side.

List this I.A. on **01.11.2023**.

**I.A. 708/2022**

This is an application filed by the Liquidator against the Respondent to pay a sum of Rs. 2,10,63,954/- to the Corporate Debtor.

Reply has been filed by the Respondent. However, when the matter was called today none appeared for the Respondent.

One last and final opportunity is given to the Respondent to appear and address their arguments, failing which the arguments of the Respondent treated as heard.

List this I.A. on **07.11.2023**.

**I.A. 2687/2021**

Ld. Counsel appearing for the Respondent/Income Tax Department seeks time to file Reply. Let the same be done within two weeks by serving a copy to the other side, failing which the Respondent's right to file Reply shall stand forfeited.

List this I.A. on **01.11.2023**.

**I.A. 2654/2021**

This is an application filed by the Applicant/RP against the Respondent i.e. Nimitaya Infotech Pvt. Ltd, Nimitaya Infrastructure Pvt. Ltd and The Station House Officer.

Ld. Counsel appearing for the Respondent Nos. 1 & 2 is present and seek some time to make the submission.

Ld. Counsel appearing for the Applicant submits that he had received the Reply of R1 and R2, however, hard copy of the Reply is not available with this Bench.

The Ld. Counsel appearing for the Respondent Nos. 1 & 2 is directed to provide the hard copy of the replies to this Bench.

List this I.A. on **28.11.2023**.

**I.A. 1749/2021**

This is an application filed by the Applicant/RP against the Respondents under sections 66, 43, 45, and 60(5) of the IBC, 2016 however as per the settled law composite application under sections 66, 43, 45, and 60(5) is not permissible.

The Ld. Counsel appearing for the Applicant seeks some time to amend the Application.

List this matter on **22.11.2023**.

**I.A. 799/2020**

The Ld. Counsel appearing for the applicant submits that there are 12 Respondents. R12 present is marked 03.03.2020.

Upon asking about service to the other Respondents he seeks some time to go through the documents and update this Bench and requested time to provide the same.

List this matter on **22.11.2023**.

**I.A. 795/2020**

List this I.A. on **22.11.2023**.

Sd/-  
CHARANJEET SINGH GULATI  
Member (Technical)

Sd/-  
LAKSHMI GURUNG  
Member (Judicial)