

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

108. I.A. 4480/2023

I.A. 1855/2022

I.A. 1850/2022

I.A. 708/2022 IN C.P.(IB)-2640(MB)/2019

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

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **18.03.2024**

NAME OF THE PARTIES: Rattan India Finance Pvt Ltd

V/s.

Cox & Kings Ltd

SECTION 7 OF IBC, 2016

ORDER

Hearing Through: Virtually and Physical (Hybrid) Mode

Adv. Nausher Kohli a/w Adv. Pulkitesh Dutta Tiwari, Adv. Shruti Singhi i/b Menon & Mankava for the Liquidator.

Adv. Mranal Mandhane a/w Adv. Shiva Gaur i/b Adv. Kanchan Shivkar for the Respondent in I.A. 1850/2022 is present physically

Adv. Shyam Kapadia a/w Yash Dhruva and Ruchita Jain i/b MDP and Partners for the Respondent in IA 4480/2023, Adv. Kamesh Vedula, for Respondent in IA 708/2022, Adv. Sumit. Parkar for the Respondent Etihad Airways PJSC IA-1855/2022, Adv. Ritu Singh Mann and Adv. Dheeraj Kumar Garg, for Etihad Airways in IA No. 1855/2022, Mr. Ashutosh Agarwala all are present through VC.

I.A. 4480/2023

1. The above application has been filed by Mr.Ashutosh Agarwala seeking following reliefs:

- a. In exercise of its power under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and other applicable laws, direct the Respondent to pay the Applicant Rs. 27,96,471/- (Rupees Twenty Seven Lakh Ninety-Six Thousand Four Hundred Seventy-One) together with interest payable thereon at the rate of 18% per annum from 01.08.2019 till 15th March 2023, amounting to Rs. 18,23,146/- and further interest till actual payment or realization;*
 - b. Alternatively, in exercise of its powers under Section 33(5) of the Insolvency and Bankruptcy Code, 2016 permit the Applicant to institute necessary legal proceedings before the appropriate court, authority or forum for the purpose of recovering the amounts that are due and payable by the Respondent to the Corporate Debtor;*
2. We observe from email dated 22.12.2021 addressed by the Respondents to the Liquidator that an amount of Rs. 19,12,136/- is mismatched on account of GST.
3. Mr. Shyam Kapadia submits that in many invoices GST charged by CD has been paid by the Respondent but the same has not been paid to the GST Department. As the CD is under liquidation and unable to pay the GST liability, ITC on paid GST would be reversed by GST Deptt. Therefore, according to him, even if Respondent pays the mismatched amount to the CD it will not be able to claim ITC and will incur the GST liability with interest exposing it to double jeopardy.
4. A question was put to the Counsel for the Respondent whether Respondent is willing to voluntarily reverse the ITC claimed by it and discharge the GST liability with interest to the GST Department to which Mr. Kapadia fairly accedes to the same.
5. Mr. Nausher Kohli, Ld. Counsel for the Applicant seeks time to take instructions from the client. List on **22.03.2024**.

I.A. 1855/2022

Ld. Counsel for the Respondent submits that pursuant to the order dated 13.12.2023, cost has been paid and Affidavit in Reply has been filed after serving on the other side.

Ld. Counsel for the Liquidator seeks time to peruse the Reply and advance the submissions on the next date of hearing. He however, requests that data given in the chart on page 19 & 20 of the Reply may be provided in the Excel format. Ld. Counsel for the Respondent has no objection to share the said data and agrees that the same would be provided to the Liquidator.

Parties shall complete and exchange the pleadings well before the next date and be ready for arguments. No further time would be granted to either Parties as the matter is very old of the year 2022.

List on **12.04.2024**, for hearing.

I.A. 1850/2022

1. The above application has been filed by Liquidator under Section 60(5) and Section 33(5) of the Code seeking following reliefs:
 - b. *In exercise of its powers under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and other applicable laws, direct the Respondent to pay the Applicant Rs. 5,05,10,844/- (Rupees Five Crore Five Lakh Ten Thousand Eight Hundred Forty-Four) together with interest payable thereon at the rate of 18% per annum from 1st April 2019 till 21 June 2022, amounting to Rs. 2,93,18,431/- (Rupees Two Crore Ninety-Three Lakh Eighteen Thousand Four Hundred Thirty-One), and further interest till actual payment realization:*
 - c. *Alternatively, in exercise of its powers under Section 33(5) of the Insolvency and Bankruptcy Code, 2016, permit the Applicant to institute necessary legal proceedings before the appropriate court, authority or forum for the purpose of recovering the amounts that are due and payable by the Respondent to the Corporate Debtor;*
2. Respondent has filed reply. In paragraph 14 to 16 of the reply, it is stated as follows:

“14. The IFFCO Tokio preferred a Civil Appeal before the Hon’ble Supreme Court bearing Civil Appeal No. 8633/2022. The Hon’ble Supreme Court vide its order dated 10.10.2023 refused to pass interim order in favour of IFFCO Tokio.

15. The IATA acts a clearing agent through its BSP and represents as an agent of the airline to the travel agent. As IATA terminated agreement with Cox & Kings on 24.09.2021, pursuant to which, IATA is no longer authorized on behalf of Cox & Kings to collect dues owed to Cox & Kings from various airlines. However, there is no mail dated 28.01.2022 from Respondent to IATA and IFFCO Tokio stating that “no objection received from IATA or IFFCO Tokio for a period of fifteen days from the date of email.”

It is pertinent to mention that dues of Cox & kings owed to the Respondent were fully paid by the Insurer of IATA, i.e IFFCO Tokia General Insurance Co. Limited and vide letter dated 08.11.2019 issued by IATA to Airlines, it was clarified that it had executed a letter of subrogation with IFFCO Tokio, to recover amounts due from the airlines to Cox & kinds under the mandate of said letter dated 08.11.2022 as issued by IATA, the payment were not made by the Respondent.

16. Respondent would not be able to pay the dues owed to Cox & Kings as per the Assured Flat Incentive Scheme for travel agents. FY-2018-19.

Counsel for the Respondent submits that in case the payment comes through International Air Transport Association “IATA’ then they will have make payment to them on account of Cox & Kings Limited. Therefore, without directions of this tribunal, they cannot release the payment to the CD.”

3. Heard Ld. Counsel for both the sides perused the documents. As per chart, giving calculations of amount due to the CD, annexed as Exhibit-

B (Pg 22) to the Application, Respondent, Air India has calculated the final payment due to Corporate Debtor which is as follows:

1.	Productivity Incentive	Link	Rs. 1,46,90,253/-
2.	Group Advances	Deposit	Rs. 3,58,20,591/-
TOTAL			Rs. 5,05,10,844/-

4. In this case, Respondent has not denied its above liability to pay to the CD, but seeks to adjust this amount against any future demand which may be made to it by Iffco Tokio, through IATA and therefore seeks directions of this Court without which they cannot release the payment to CD.
5. Having considered the submissions on both the sides, we are of the view that any adjustment proposed to be made by Air India/Respondent on account of the amount payable to M/s. IFFCO Tokio General Insurance Co. Ltd. through IATA will amount to **offset** of the amount payable to the CD under Liquidation which is not permitted as it would amount to violation priorities under Section 53 of IBC, 2016. In view of the same, we direct Respondent to release the payment of Rs. 5,05,10,844/- as per prayer clause 'b' above but without interest. Accordingly, I.A. 1850/2022 is **allowed** and **disposed of**.

I.A. 708/2022

Parties seek two weeks' time for reconciliation. At their request list the matter on **12.04.2024**.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

Sd/-
LAKSHMI GURUNG
Member (Judicial)

//NSW//