

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 03.08.2020

THROUGH VIDEO CONFERENCING
CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 307/BB/2019	For dissolution IA 260/2020- CIRP	Sec 7 of I&B Code 2016	M/s Learning Candid India Pvt Ltd		M/s Alfa People IT Services Pvt Ltd	Surender Devasani, RP

ADVOCATE FOR PETITIONER/s:

MR. K.N. RAVINDRA, PCS for R.P.

ADVOCATE FOR RESPONDENT/s: —

ORDER

Heard Shri K.N. Ravindra, PCS for the RP, through Video Conference.

CP (IB) No. 307/BB/2019 & I.A No. 260/2020 is disposed of by separate order.


MEMBER (T)


MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No. 260 of 2020
U/s 54(1) of I&B Code, 2016,
R/w Rule of 11 of the NCLT Rules, 2016 &

C.P. (IB) No.307/BB/2019
U/s 7 of the IBC, 2016,
R/w Rule 4 of the I&B (AAA) Rules, 20

Mr. Surender Devasani
Resolution Professional of
M/s. Alfapeople IT Services Pvt Ltd

R/a. No. 1436, Anasuya Nilaya,
2nd Floor, 8th Cross, 10th Main,
BTM 2nd Stage,
Bengaluru - 560 076

... Applicant/RP

In the matter of:

M/s. Learning Candid India Pvt Ltd.
#647/1, 1st Main, 1st Stage,
Indiranagar, 100 Ft. Road,
Bangalore - 560 038

... Petitioner/Financial Creditor

Versus

M/s. AlfaPeople IT Services Pvt Ltd.
#26/1, 1st Floor,
Regus Gem, IBIS Hotel,
Bommanahalli,
Bangalore- 560 068

... Respondent/Corporate Debtor

Date of Order: 3rd August, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant/RP : Mr. K.N. Ravindra, PCS

ORDER

Per: Rajeswara Rao Vittanala, Member (J)



1. I.A.No.260 of 2020 in C.P. (IB)No.307/BB/2019 is filed by Shri Surendra Devasani, Resolution Professional of M/s. AlfaPeople IT Services Pvt Ltd. (hereinafter referred to as 'Applicant/Resolution Professional') under Section 54(1) of the I&B Code, 2016, and read with 11 of NCLT Rules, 2016, by inter seeking to pass appropriate orders for assignment of Bank and Cash balance amounting to Rs.21,153/-, GST refund amount of Rs.3,62,546/- and VAT refund amount of Rs.15,000/- to M/s. Learning Candid India Pvt Ltd.to pass appropriate orders for Dissolution of the Corporate Debtor M/s. Alfapeople IT Services Pvt Ltd. in terms of Section 53 of IBC, 2016 as a special case ; to grant exclusion of COVID-19 period of 68 days (from March 25th to May 31st 2020) using inherent powers u/s 60(5) of IBC, 2016 and regulation 40 (c) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:
 - (1) Initially, C.P. (IB) No. 307/BB/2019 was filed by M/s. Learning Candied India Pvt Ltd. (Financial Creditor) U/s 7 of IBC read with Rule 4 of the I&B (AAA) Rules 2016 in respect of M/s. Alfapeople IT Services Pvt Ltd. was admitted by the Adjudicating Authority, vide order dated 5th February 2020. Subsequently, the COC has appointed the Applicant as Resolution Professional in its 1st COC meeting held on 16th June, 2020. The IRP caused publication of Form A in newspapers viz., Financial Express and Vartha Bharati (Kannada) on 22nd May, 2020 intimating the commencement of CIRP and inviting claims on Corporate Debtor. In pursuant to the above publication, the IRP received claims and after scrutinising it, has constituted Committee of Creditors on 11.06.2020.
 - (2) The 2nd COC was conducted on 8th July, 2020, wherein the status of Financial Position of the Company was discussed and appointment of Valuers for valuation of Securities or Financial



Assets were decided. Subsequently the 3rd COC meeting was held on 25th July, 2020, wherein the OCC had detailed deliberations on the Audited Financial Statements as of 31.03.2020 and valuation reports of Securities or Financial Assets. As the liquidation value of assets are only Rs.46,213/- as against admitted claims of Rs.35,70,225/- the COC has passed resolutions for direct dissolutions of the Corporate Debtor without continuing the CIRP and Liquidation process.

(3) The CIRP period of 180 days ends on 3rd August 2020. However, due to lockdown imposed by the Govt. of India during 25th March, 2020 and 30th May, 2020 (68) days due to COVID-19, no action could be taken during the period. Hence, they sought for exclusion of lockdown period of 68 days from the CIRP period, in terms of 40(c) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

3. Heard Shri K.N. Ravindra, PCS for the RP, **through Video Conference**. We have carefully perused the pleadings of the Party and the extant provisions of the Code and the Rules made thereunder.
4. Before considering the merits of case, it is necessary to refer relevant provisions and rules, as available under the Code and the Rules made thereunder. Section 33(2) of Code reads "Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1). **Section 54 of the Code reads "54.** (1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.(2)



The Adjudicating Authority shall on application filed by the liquidator under sub-section (1) order that the Corporate Debtor shall be dissolved from the date of that order and the Corporate debtor shall be dissolved accordingly.(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered. **Rule 14 of IBBI (Liquidation Process) Regulations, 2016** reads as “**14. Early dissolution.** Any time after the preparation of the Preliminary Report, if it appears to the liquidator that- (a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and (b) the affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution. **Rule 11 of NCLT Rules, 2016** confers inherent powers on NCLT, which reads as “Rule, 11- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal. **Section 64 of Code** ordains the Adjudicating Authority to dispose of Applications/Petitions filed under the provisions of Code as expeditiously, within the prescribed under this Code.

5. In terms of Section 60 of Code, the Adjudicating Authority shall be NCLT having territorial jurisdiction over the place, where the registered office of corporate persons is located. By conjointly reading the above provisions, the ultimate objective of Code is either to resolve the issue by way of Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible. If the facts and circumstances of a case, justify there would not serve any purpose to keep the Corporate Debtor under regular CIRP proceedings, and thereafter under Liquidation proceedings, under the provisions of Code, the



Adjudicating Authority, by exercising its inherent powers conferred under the Act, can pass appropriate order(s) in the interest of speedy justice.

6. In the instant case, the basic facts are not in dispute viz. the CD is not a going concern and its operations were shut since April, 2018; there are no employees on its rolls; there are no fixed assets in the Company; the only assets available as per Balance sheet of 31.03.2020 are Bank balance of Rs.21,153 and GST Refund of Rs.3,62,546 and VAT refund amount of Rs.15,000/-. The Liquidation value is mere Rs.46,213 and admitted liabilities is Rs.35,70,225/
7. It is relevant to point out here that though the Applicant/ Resolution Professional, being aware of the financial position of Corporate Debtor, has claimed huge fee of Rs.1,20,000/- per month ,huge incidental expenses, in addition he has conducted futile exercise of appointing two Registered valuers at huge valuation fee of Rs.59,590/ for valuation of Securities or Financial Assets. The Companies like present Corporate Debtor, the Resolution Professional is not justified to claim huge fee and incur further expenditure for nothing. Therefore, the Applicant is not entitled for any further fee or reimbursement of expenditure and he has to render service to complete the consequential process of dissolution, in pursuance to this order.
8. The above facts and circumstances of the Case justified that there would be no useful purpose be served, by placing the Corporate Debtor under Liquidation process, under the extant provisions of Code. Since meagre contingent Liquidation value as detailed supra, the liquidation process under the provisions of Code is deemed to have completed under Chapter III of Part II of Code, and thus it would be just and proper for the Adjudicating Authority to dissolve the Company by declaring that **M/s. Learning Candid India Pvt Ltd**



(Financial Creditor) is fully eligible to claim remaining amount as detailed supra. The instant Application is filed in accordance with law and the Resolution in question to dissolve the Corporate Debtor was approved unanimously as detailed supra.

9. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 54 and other connected Provisions of Code, and the Rules made thereunder, **C.P. (IB)No. 307/BB/2019 and I.A.No.260/2020**, are hereby disposed of with the following directions:

- (1) It is hereby dissolved the Corporate Debtor namely, **M/s. AlfaPeople IT Services Pvt Ltd**, with immediate effect.
- (2) It is hereby further declared **M/s. Learning Candid India Pvt Ltd**. is eligible to receive/claim remain amounts in question and the Resolution Professional is not entitled for any further fee or any expenditure, and he has to complete consequential dissolution process, in pursuant to this order.
- (3) The Registry is directed to forward a copy of this Order to the Registrar of Companies, Karnataka, Bengaluru, within a period of two weeks from today;
- (4) The Resolution Professional is also directed to forward copies of this Order to all other Statutory Authorities including IBBI, connected with the affairs of the Company.
- (5) Personal liability/Guarantee of any Director/Promoter of the Corporate Company, if any, would not absolve them by virtue of this order. Aggrieved party/Parties are at liberty to continue or to take appropriate legal course of action against them.
- (6) No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL