

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI
COURT – III.

CA No.448-C/3-ND OF 2019.

IN

C.P.IB No. in 358/ND/2018

Anurag SharmaInterim Resolution Professional for Applicant
M/s. Alpfly Private Limited
40, LGF, National Park, Lajpat Nagar
New Delhi-110024.

In the matter of:

M/s. Alpfly Private LimitedCorporate Applicant

In Re:

- 1. Ravi Kant Gupta, Suspended Director of Alpfly Pvt.Ltd.**
S/o.Sh.Murari Lal Gupta
R/o.28/62, Gali No.15, Vishwas Nagar, SHD,Delhi – 110032.
- 2. Sh.Zuheb Khan, Suspended Director of Alpfly Pvt.Ltd**
S/o.Sh.Izzat Ahmad Khan
R/o. 185/91-D, Gali No.5
GaffarManjil, New Delhi-110025.
- 3. Sh. Shehroz Zaman Khan Suspended Director of Alpfly Pvt.Ltd**
S/o.Sh.Izzat Ahmad Khan
R/o C-25/2, OkhlaVihar, Jamia Nagar
Near JasolaBaoundary, New Delhi-110025.
- 4. Smt.Davinder Kaur Chandhok, Suspended Director of Alpfly Pvt.Ltd.**
D/o.Sh.Joginder Singh Sabharwal
R/o. 402, D P S Apartments, Dwarka
Plot No.16, Sector-4, Delhi-110075.

.....Respondents/ Suspended Director of Alpfly Pvt.Ltd.

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SECTION:

UNDER SECTION 65 READ WITH SEC. 77 OF IBC 2016

Order Delivered on : 30.09.2019

Coram:

**Sh.R. Varadharajan,
Hon'ble Member (Judicial)
Shri Kapal Kumar Vohra,
Hon'ble Member (Technical)**

**For the Petitioner/Op. Creditor : Mr.Mohit Chaudhary,
Imran Ali & Ms.Garima
Sharma.
Interim Resolution Professional : Mr. Anurag Sharma**

ORDER

Delivered On-30.09.2019

The above application has been filed seeking for directions u/s. 65 read with Sec. 77 of the Insolvency and Bankruptcy Code 2016 (IBC), 2016. The application has been preferred curiously by the Interim Resolution Professional (IRP) who has been proposed by the Corporate Applicant itself in the main Company Petition. At this stage, it is required to note that the main Company Petition was initiated by the Company itself namely, the Corporate Debtor (CD) u/s.10 of IBC seeking for the initiation of Corporate Insolvency Resolution Process (CIRP) under the provisions of IBC. Under the application, the applicant namely



the IRP seeks to bring to the notice of this Tribunal that the petition was filed by the CD itself has been filed based on fraud and without non-disclosure of material particulars before this Tribunal seeking for the CIRP as against itself. In relation to the allegation of fraud having been committed by the CD, the following details are alleged namely :-

1. Non-disclosure of complete bank account details of the CD in the Petition: It is pointed out by the applicant that in addition to the account, as disclosed in the Petition namely held with that of HDFC Bank, Amar Colony, another account was also held with Axis Bank which has not been disclosed, even though it has been lying dormant since March, 2017. It is also brought to the notice that operations by way of transfer of funds had taken place from HDFC Bank to Axis Bank in huge quantum and obviously monies which have been collected from the Customers of the CD.
2. Non Disclosure of related party transactions in the report of the Auditors as well as in the Balance Sheets: The applicant seeks to bring to the notice that from the Bank Account held by the CD with Axis Bank, huge cash transactions as well as transfers had taken place between ALPHA SOFT TECHNOLOGIES PVT Ltd. (ASTPL) and the CD and it is pointed out that the said entity, based on a search conducted with the MCA Website at present is having the same set of directors as that of the CD namely Mr. Ravi Kant, Gupta and Mr. Maneet Singh Chandhok. It is also pointed out in relation to the above said company namely ASTPL even though incorporated in the year 2014 has not filed any Financial statements/Balance Sheets as of today. Further, the transactions between the CD and ASTPL have also not been disclosed in the Auditor's Report under related party transactions and which is also not in compliance with Accounting Standard 18 which the Company is necessarily required to follow in the preparation of its financial statements. It is also highlighted in the



application that the transactions perpetrated by the CD in relation to the Bank Accounts particularly during the period of demonitization on 29.11.2016 have been done in violation of the same, as huge deposits and withdrawals in cash have been made in the Bank Accounts which require the attention of the concerned Revenue Authorities. The applicant also states that for the year ending 31.3.2017, the CD has shown an extension of loan to the extent of Rs.28,43,000/- to ASPTL. However, the ledger in relation to ASPTL for the period records with an opening balance of Rs.16,914/- (Debit balance) instead of the loan amount which was extended in sum of Rs.28,43,000/- being the closing balance as disclosed in the Balance sheet of the CD as on 31.3.2017. Upon a perusal of the Bank Statement correspondingly it is seen that no sums have been collected from ASPTL to the extent of Rs.28,43,000/- during these two days. However, contrary to the above, the Provisional Balance sheet as on 31.3.2018 enclosed at the time of filing the petition discloses that all outstanding loans and advances have been recovered by the CD.

3. Non-disclosure of the information pertaining to the locked office premises of the CD:- the applicant highlights the above namely that of the locked premises has been primarily used as a ruse by the persons in the Management of the CD to avoid furnishing documents as well as to handover whatever assets available with the CD and thereby avoid furnishing details to the IRP which had in effect thwarted the efforts of the IRP in gathering financial particulars, more so when the CIRP is under fast track Insolvency.
4. Incorrect statement made in the application pertaining to GST refund. Eventhough a disclosure of Rs.17 lacs is stated to be due by way of GST refund in the petition preferred by the CD u/s.10 of IBC 2016, however, upon a perusal of the GST website it is seen that no such amount is due by way of



refund to the CD even though the total tax as paid by the CD is around Rs.8,50,000/-. The above incorrect statement according to the applicants are liable to be punished u/s.77 of IBC 2016.

5. Non-disclosure of factum of ongoing criminal complaints against the Corporate Applicant/Debtor namely ALFPLY Private Ltd. and its directors: Even prior to the admission of the petition, in this regard, it is highlighted by the applicant that the account of Mr. Ravi Kant Gupta according to his own admission has been freezed from 4.6.2018 as held with HDFC Bank, in view of a communication from Cyber Crime Police Station based on a complaint which had been received u/s. 91(1)(2) of Cr.PC lodged with Marathahali Police Station. In view of the non-disclosure by the CD of the Criminal Complaint which may have had a material bearing on the admission of the petition itself, it is represented by the applicant that material facts have been suppressed by the CD in the Petition or at the least before its admission by this Tribunal.
6. In addition to the above allegations as made in the application in support of the invocation of the Sections under which this application has been filed, the applicant also highlights extortionate transactions by way of exorbitant cash deposits and cash withdrawals from the Bank Account by the CD. In elaboration of the said allegation it is highlighted by the applicant that on 28.11.2016, by way of cash transaction a sum of Rs.70 lacs had been deposited and on 29.11.2016, the very next day a sum of Rs.55 lacs in cash had been withdrawn all during the period of demonetisation.
7. Further the applicant also alleges that a sum of Rs.1,01,00,000/- was transferred out of the Company's fund to one M/s. Marathon Finlease Pvt.Ltd. (NBFC) company claiming it to be as a transfer by way of loan given

to the NBFC. Even though the said loan amount seems to have been repaid but however, a close nexus of the repaid amount with that of the amount withdrawn by one of the directors of the Company namely Mr. Ravi Kant Gupta, to his personal account it is alleged is evident from the Bank statement. In effect it seems to be a rerouting of the monies of the CD through this mode to the personal account of Ravi Kant Gupta according to the applicant and all of the above seems to be the sum and substance of the allegations as made by the applicant. It is also highlighted on the part of the applicant that transfers between the Directors inter-se through the bank account of the CD is also evidenced and the said transactions have also been highlighted by way of a tabulation in the application. All the above points out according to the Applicant the rotation of funds which have taken place for the sake of entries and for creation of loan from the directors as it given to the CD as reflected in the provisional Balance sheet as filed before this Tribunal and all of which seems to be only fictitious entries calling for its explanation from the directors as well as the auditors of the CD. Taking into consideration inter-alia all the above averments and allegations as made in the application, the applicant being the learned IRP seeks for action to be brought forth against the Respondents impleaded in the application u/s.77 of IBC read with section 65 of IBC.

7 b) Before going into the merits of the application as filed by the Ld. IRP, it is required to notice certain basic facts which has led the IRP to file this application for which purpose this Tribunal refers to the record of proceedings as available with this Tribunal as well as the particulars which have been disclosed by the CD at the time of filing the petition. Even though the petition as evident from the endorsement made by the Registry of this Tribunal had been filed on 2.4.2018, the Board Resolution as passed by the Board of Directors of the CD is dated 2nd March, 2018 and a copy of the same has



been annexed as annexure X to the petition at page No. 324. The extract of the Board Resolution is material for the case on hand and in the circumstances the same is reproduced :

“ANNEXURE-X

**ALPFLY PRIVATE LIMITED
(CIN No.U63000DL2016PTC299351)**

CERTIFIED TRUE COPY OF BOARD RESOLUTION PASSED AT THE MEETING OF BOARD OF DIRECTORS OF ALPFLY PRIVATE LIMITED DULY HELD ON FRIDAY, 02 DAY OF MARCH 2018 AT ITS REGISTERED OFFICE AT B-6/2, GF, JOGABAI EX, JAMIA NAGAR, OKHLA, NEW DELHI-25 AT 4.00PM.

It is resolved that due to non-availability of funds, the company is unable to pay its creditors, and all the directors resolved to file application u/s 10 of The Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process with regard to the company.

All Directors are authorized to sign on behalf of the ALPFLY Pvt. Ltd. for filing the above mentioned application before NCLT, New Delhi. The application will be signed by all the directors.

Director(s):

DAVINDER KAUR CHANDHOK	Director
ZUHEB KHAN	Director
SHEHROZ ZAMAN KHAN	Director
RAVI KANT GUPTA	Director”

8. Perusal of the Board Resolution per-se dated 2.3.2018 it is seen that all the Directors of the Company have affixed their signatures to the said Board Resolution. This petition it should be noted at the cost of reiteration has been filed u/s.10 of IBC ,2016 read with Sec.55 of the said Act seeking for the initiation CRP to be completed under Fast Track

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Insolvency Resolution Process for Corporate Persons Regulations 2016 thereby seeking to complete the process expeditiously by this Tribunal with in a period of 90 days from the date of admission of the petition as filed by the petitioner for reasons best known only to the CD. This primarily connotes that the petitioner is required to furnish all the information as may be sought for by the IRP proposed by the petitioner itself and also fully cooperate with the process of the CIRP, as well as by making a true disclosure before this Tribunal in the petition, as well as thereafter when the matter is pending before this Tribunal subsequently till its final disposal. Whether this onus which has been cast upon the petitioner has been fulfilled or not will be considered in the later portion of the order. The petition has been admitted as evident from the records of this Tribunal on 12.7.2018 and it is evident from the order that taking into consideration the facts as well as the documents filed in support of the petition and also the decision of the Hon'ble NCLAT rendered in Unigreen Global Pvt. Ltd. Vs Punjab National Bank and Ors. Consequent to the admission of the Petition based on the disclosures as made by the Petitioner and considering it to be prime-facie true this Tribunal has also appointed the IRP as proposed by the petitioner itself namely Mr.Anuragh Sharma who incidentally happens to be the applicant herein. At this point, a slight digression will be in order in relation to the role of the IRP and the disclosures which they are required to make in Form-2 as prescribed by insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016. For ready reference the prescribed Form No.2 is reproduced hereunder:

“FORM 2 (See sub-rule (1) of rule 9) (Under rule 9 of
the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016)

WRITTEN COMMUNICATION BY PROPOSED INTERIM
RESOLUTION PROFESSIONAL

[Date]

To, The National Company Law Tribunal

[Address]

From, [Name and address of the registered office of the proposed interim resolution professional]

In the matter of [name of the CD]

Subject: Written communication in connection with an application to initiate corporate insolvency resolution process in respect of [name of the CD]

Madam/Sir,

I, [name of proposed interim resolution professional], an insolvency professional registered with [name of insolvency professional agency] having registration number [registration number] have been proposed as the interim resolution professional by [name of applicant financial creditor] in connection with the proposed corporate insolvency resolution process of [name of the CD].

In accordance with rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, I hereby:

- (i) agree to accept appointment as the interim resolution professional if an order admitting the present application is passed;
- (ii) (ii) state that the registration number allotted to me by the Board is [insert registration number] and that I am currently qualified to practice as an insolvency professional;
- (iii) (iii) disclose that I am currently serving as an interim resolution professional / resolution professional / liquidator in [insert number of proceedings] proceedings;



- (iv) (iv) certify that there are no disciplinary proceedings pending against me with the Board or [name of the insolvency professional agency he is a member of];
- (v) (v) affirm that I am eligible to be appointed as a resolution professional in respect of the CD in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
- (vi) (vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;

(Signature of the insolvency professional)
(Name in block letters)
(Name of insolvency professional entity, if applicable)

[Optional certification, if required by the applicant making an application under these Rules] I, hereby, certify that the facts averred by the applicant in the present application are true, accurate and complete and a default has occurred in respect of the relevant CD. I have reached this conclusion based on the following facts and/or opinion: [Please give details].
(Signature of the insolvency professional) (Name in block letters) (Name of insolvency professional entity, if applicable)”

9. It is evident from the above Form in the final portion, an optional certification has been provided to be made by the proposed IRP. However, taking into consideration the peculiar facts of the present case, and in order to consider



avoiding similar instances in future, it is recommended to IBBI that in relation to a petition filed u/s.10 instead of an optional certification to be given by the IRP, the same be made compulsory in order to obviate a fraud being played upon this Tribunal at the time of admission of the petition and which is subsequently sought to be brought to the notice of this Tribunal by the IRP himself when much water has flown after the admission of the petition and that too at this belated stage seeking for undoing the admission of the petition as well as initiation of the CIRP as a consequence thereof.

9(b) Once again coming back to the merits of the application, and continuing from the stage at which a digression was made, it is seen that the IRP appointed by this Tribunal has filed 3 status reports the first one on 9.8.2018 in relation to constitution of the COC based on the claims which have been received and admitted and seeking for the appointment of an authorized representative in view of the peculiar circumstances as prevalent in relation to the CD taking into consideration no claim has been received from either a financial creditor or an operational creditor as the case may be and the claims, if at all have been received only from the customers of the CD constituting the Members of the travel schemes formulated by the CD in relation to carrying out the business of Tourist and Travel Agents. In the said report it has also been highlighted that in all there were 3280 customers to whom the money is required to be paid by the CD and the sum payable in all aggregating to Rs.2,55,202,441/- under the different travel schemes. In the report it has also been highlighted by the IRP that the CD according to the respondents had failed in its business model in spite of receiving unsecured loans from the Directors to the tune of Rs.2,25,028,313/-.

10. From the second report as filed on 4.9.2018, the IRP has highlighted as to how persons have been coming into the company as Directors and after a short period of time



resigning therefrom. It is interesting to note for example in relation to one Mr. Ravi Kant Gupta whose date of appointment seems to be 10.5.2016 and the date of cessation to be 4.8.2016. It is further interesting to note that again the said Ravi Kant Gupta has been made as an additional director of the CD on 15.11.2016 and has ceased to be as such on 1.3.2017. Again on 9.11.2017, Ravi Kant Gupta is reflected as a Director of the CD. This coming and going of the Directors of the CD seems to be prevalent in relation to Maneet Singh Chandhok as well as in relation to Davinder Kaur Chandhok. Here it will be appropriate to notice that the transactions including the related party transactions as highlighted by the applicant with the APSTL had been done by the above said persons namely Ravinder Gupta and Davinder Kaur Chandok and Maneet Singh Chandok as well as in relation to transaction inter-se through the CD. All seems to have been purportedly done by these directors incidentally also the persons as evident from Board Resolution of 02.03.2018 being the brain behind in filing main company petition before this tribunal seeking for the initiation of the CIRP in relation to it. The IRP in the 2nd report filed on 4.9.2018, has also brought forth the transactions in relation to Axis Bank as well as the loan transaction of Rs.1,01,00,000/- made available to NBFC Company as alleged in the present application. A comparative chart which is material for the application on hand has also been provided in relation to the total withdrawals made by the board of directors whose powers stands suspended including Mr. Ravi Kant Gupta, Davinder Kaur Chandok as well as Maneet Sigh Chandok and the total deposits made by them in the bank accounts of the CD as evident from the bank statements. The said tabulation as contained in the report dt. 4.9.2018, is reproduced hereunder for ready reference:

Name of Director	Total Withdrawal	Total Deposit
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Ravi Kant Gupta	5,23,36,055/-	1,15,35,000/-
Davinder Kaur Chandhok	1,83,03,310/-	1,25,000/-
Maneet Singh Chandhok	59,09,166/-	5307,301/-
Zuben Khan	28,13,759/-	28,68,000/-
Shehroz Zaman Khan	68,750/-	27,95,000/-

11. The 3rd Interim report of the IRP have been filed on 26.10.2018. From the said report, it is evident that the IRP was not able to function and do its duties in view of lack of funding and that despite the directions of this Tribunal by order dated 16.10.2018 under the circumstances stated in the order directing the IRP to take the assistance of an authorized representative in accordance with the choice of the claimants who have filed the claim with the IRP seeking for the refund of the money from the CD and directing the CD to defray the expenses and cost of the (IRP).

11(b) Turning to the record of proceedings, it is seen that the payments as directed by the Tribunal to be made by the CD to defray the cost and expenses of the IRP for carrying forward the CIRP of the CD had not been complied. This Tribunal was hence compelled vide order 12.11.2018 to direct the persons behind the CD, by lifting the corporate veil to direct the pay-outs to be made as the petition itself has been initiated by the CD u/s.10 of IBC 2016. However, it is also evident from the record of proceeding and as represented by Ld. IRP that against the order dated 16.10.2018 as well as 12.11.2018, Mr. Ravi Kant Gupta and others have approached the Hon'ble NCLAT in Company appeal AT (insolvency) No.782-783 of 2018 and from the orders passed in relation to the appeal on 14.5.2019 the material portions as contained in para-6 and para 7 of the said order is re-produced for ready reference:

“In the Circumstances, while we are of the opinion that the order regarding expenses of “Resolution Professional” was not required to be determined at this

stage, we are also of the view that considering the record, the Adjudicating Authority should also see whether the application under Section 10 of the I&B Code was filed fraudulently or with malicious intention for any purpose other than for the resolution of the insolvency or liquidation as defined under section 65 of the I&B Code and if so necessary, it may request the Central Government for reference to the SFIO under Sections 212 and 213 of the Companies Act, 2013 and other provisions of the Insolvency & Bankruptcy Code including Part II Chapter VII wherein 'Offences and Penalties' have been prescribed.

As the doubt has been raised, we are not inclined to interfere with the impugned orders. However, this will not come in the way of the Adjudicating Authority to proceed with the matter in accordance with the law. The appeal stands disposed of with the aforesaid observations."

12. Pursuant to the above directions, as extracted above from the judgment of Hon'ble NCLAT, the application seems to have been moved by the Ld. IRP on 21.6.2019 bringing forth the acts of fraud perpetrated by the Respondents in relation to the affairs of the CD and in preferring this application upon reference to the relevant sections namely Section 65 and section 77 of IBC, 2016 under which this Application has been filed it reads as under:-

Sec. 65

Fraudulent or malicious initiation of proceedings.

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the adjudicating authority may impose upon such person a penalty which shall not be less



than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees,

Sec.77

Punishment for providing false information in application made by CD.

Where-

(a) A CD provides information in the application under section 10 which is false in material particulars, knowing it to be false and omits any material fact, knowing it to be material; or

(b) any person who knowingly and wilfully authorised or permitted the furnishing of such information under sub-clause(a)

Such CD or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

Explanation- For the purpose of this section and sections 75 and 76, an application shall be deemed to be false in material particulars in case the facts mentioned or omitted in the application, if true, or not omitted from the application as the case may be, would have been sufficient to determine the existence of a default under this Code."



A careful perusal of the above two provisions which has been invoked in this application, while in relation to Section 65 of IBC 2016, this Tribunal as an adjudicating authority has the powers to adjudicate, however in relation to the later provision, namely Section 77 of IBC 2016 taking into consideration Section 236 of IBC, 2016 the cognizance of offences alleged to have been committed under the provision invoked can be gone into and is in the preserve of special court established under chapter 28 of the Companies Act, 2013 (18 of 2013).

In relation to Section 65 of IBC, 2016 this Tribunal as the adjudicating authority (AA) is required to focus on the aspect as to whether the Petitioner who initiates the insolvency process has approached this Tribunal with a fraudulent or malicious intent for any purpose other than for resolution of the insolvency of the CD. If the finding is in the negative, the result will be that the CIRP or the liquidation process initiated will be allowed to be continued. On the contrary if this Tribunal comes to the conclusion that on the part of the Petitioner, there exists a fraudulent or malicious intention, apart from levying penalty as contemplated under section 65(1) of IBC, 2016 the order of admission of the petition as well as the initiation of the CIRP will also be required to be revoked as the finding of fraud vitiates the entire proceedings be it initiated under Sec.7 or Sec. 9 or Sec.10 of IBC, 2016.

13. In view of the serious allegation of fraud as made out in the application filed by the Ld. IRP, for all intents and purposes being the custodian of CD during the CIRP period, an opportunity was afforded to the Respondents, being the directors whose powers were suspended, to file their response to the application. However, despite sufficient time being granted and taking into consideration the time bound process as envisaged under IBC, 2016 and more so the Fast track insolvency process as invoked by the CD itself, since a



written response/reply was not filed, this Tribunal was constrained to proceed to hear the applicant in the absence of the reply from the Respondents, however giving an opportunity to the Ld. Counsel for the respondents being afforded to her to make oral submissions, denying that there were any fraudulent or malicious motive, intent on the part of the Respondents for initiation of CIRP under fast track mode on behalf of the CD before this Tribunal. However, we are not very much convinced by the said submissions in view of the fact there was no reason for the Respondents to file a written reply to the application under consideration, as the said allegations had been consistently made by the Ld. IRP in the status reports as well, filed even during the year 2018 and the respondents were quite aware of the same. Further more than a month had elapsed from 11.07.2019 when an opportunity was granted to the respondents to file reply and in the circumstances, this Tribunal is required to come to a conclusion that in the absence of any valid defense available to the respondents they are bent upon procrastinating, more so after the orders passed by the Hon'ble NCLAT disposed of on 14.5.2019 in the appeal preferred by them.

14. However, this Tribunal is also equally conscious that mere non filing of reply should not also result in the application being automatically allowed in a mechanical manner more so when a fraudulent and malicious intent attributed on the part of the respondents acting on behalf of the CD i.e. seeking for initiation of the CIRP on the part of the CD.

15. The Respondents herein are the prime movers in filing the main company petition in CP-IB-358/ND/2018 which is evident as all the respondents are the part of the Board of Directors of the CD which passed the Board Resolution dated 2nd March, 2018 as extracted fully in paragraph (Supra). Pursuant to the said decision collectively taken by



the Board of the CD, this petition has been filed on 2.4.2018. It is important to note that at the time of filing the main CP, it was not required for the CD moving u/sec.10 to obtain the shareholders' consent by way of special resolution as the amendment by way of Act of 2018 by Sec.10 (3) of IBC 2016 was brought about on and from 6.6.2018 only.

16. The prescribed Form under I&B (AAA) Rules, 2016, namely Form 6, has been duly signed by all the four directors it must be noted. The CD as per Form 6 is stated to have been incorporated on 10th May, 2016. Annexure VI of the Petition gives out the statement of Affairs of the CD and from the said statement filed the following Assets and Liabilities with the respective estimated values has been given, namely:-

S.No.	Assets	Estimated Values
1.	Printer	10,000/-
2.	Projector	25,000/-
3.	Security Deposit	1,05,000/-
4.	GST (to be claimed)	17,00,000/-

S.No.	Liabilities	Estimated Values
1.	Dues to Customers (3000 approximately) towards various Plans	2,55,02,441/-
2.	Sundry Creditors	36,86,035/-
3.	Unsecured Loans (from directors only)	2,25,28,313/-

17. However, in the above statement of affairs, no mention of any Bank Accounts has been specified be it HDFC Bank or Axis Bank on the date of filing this Petition. The contention of the Ld. Counsel of the Respondents is that, in view of no balance

available on the said date, (10) on the date of filing this Petition, there was no necessity for the CD as a Petition invoking Section 10 of IBC, 2016 to disclose a bank account showing 'Nil Balance'. Ld. Counsel for Applicant on the other hand contends that in view of the transactions of siphoning of funds from the relevant bank accounts there seems to be no balance available in the bank accounts and in this regard submits that the affairs of the CD had been so arranged to secrete the funds available in the said bank accounts behind the back of the gullible creditors being the general public who stands deprived. However, under Section 65 of IBC,2016 this Tribunal cannot go into the said aspect of fraud and it will be solely in the realm of the Special Court based on a duly conducted investigation on the part of the Regional Director, MCA or by the police authorities based on a complaint lodged with it.

Be that as it may, we have already stated in the earlier portion of the order that the Petition has been filed under Section 10 of the IBC,2016 by the CD and by virtue of Section 19 of IBC,2016, the personnel of the CD, its promoters and other persons associated with the management shall necessarily extend all assistance and cooperation to the IRP, namely the Applicant herein. In the 1st Report filed on 09.08.18 by the IRP at paragraph 20 of the said report it has been clearly stated by the IRP as follows:-

"That the suspended board of director has been asked to provide documents but the suspended director are not cooperating and not providing the ledgers, bills, invoices and after great persuasion has provided some documents on 09.08.2018."

Further in the said report dated 09.08.18 at paragraph 21, the complaint lodged with Cyber Crime Branch, New Delhi is also apprised which reads as follows:

"That the undersigned has received a e-mail dated 30.07.2018 from cyber crime branch, New Delhi who has informed that there is complaint filed under section 420/120-B IPC by some customers and same is under investigation

and directed the undersigned to furnish the list of customers and other details. The undersigned vide e-mail dated had supplied the desired details to the concerned police.”

18. The above paragraphs of the IRP's report clearly point out that the persons who were in the Management of the CD from the initial stage onwards, i.e. after the initiation of CIRP have not been extending cooperation coupled with complaints pending against them, all which clearly demonstrates of the conduct of the respondents herein are not above suspicion.

19. From the second Interim Report which had been filed on 04.09.18 by the IRP, the allegation in relation to the non-disclosure of Bank Accounts, namely that of Axis Bank even though dormant since March, 2017 and transactions which had taken place proximate to the date of filing Petition has been brought into focus which again reinforces the fraudulent motive of the CD in filing this petition through the respondents with a view to avail not only the moratorium afforded under Section 14 of IBC, 2016 but to also seek for the CIRP in fast track mode and thereby liquidation knowing fully well that there is no scope or there should be no scope for liquidation of CD, in a hasty manner which only points out to their malicious intent towards their creditors, namely the customers who have participated in the travel scheme floated by the CD. This Tribunal at the time of admission and initiation of CIRP vide order dated 12.07.2018, has dealt in paragraph 1(c) to 1(g) in detail the business model and reason for insolvency as represented by the CD before us and for sake of brevity the same is not repeated. However, what is important to note that in paragraph 1(e), (g) and (h) of the said order, it is seen that in the year 2017, cash outflows gradually increased and cash inflows got reduced which caused a financial stress according to CD. However, from the Second Interim Report of the IRP dated 04.09.18, taken together with the allegations made in the instant application, the funds of the CD from HDFC Bank to Axis Bank, New Delhi seemed to have been transferred with gross impunity and from the said Axis Bank Account withdrawn in cash to the personal accounts of the directors or



given to related parties or to an NBFC, which they do not have any business to give as the CD was not an NBFC and was in the travel business and the flow of funds as a loan or borrowing, if any should have been from NBFC to the CD.

20. In addition it is also seen that in relation to Ravikant Gupta and Davinder Kaur Chandhok as per the tabulation given in Paragraph Supra of the directors withdrawals and deposits the withdrawals seems to be grossly in excess of the deposits without giving any explanation and as to how their names have not been disclosed as Debtors of the CD in the statement of affairs prior to filing the Petition as required under Annexure VI of Form 6 as given in I&B (AAA) Rules, 2016. Further a sum of Rs.17,00,000/- as disclosed in the Statement of Affairs, the tabulation of which has been extracted as above being part of Annexure VI in the Petition as GST Refund seem to be also a false statement as per the allegations contained in the instant application made by the Applicant-IRP after verification from GST portal that nothing is payable as refund and in relation to the same the screenshots of GST website in relation to CD's Account have also been reproduced at page No.10 and 11 of the report dated 04.9.2018 as well as in the instant Application and no answer is forthcoming in relation to the same.

21. Hence the conduct of the Board of Directors whose powers stand suspended and at whose instance the petition came to be filed and the same was admitted and CIRP under Fast Track Insolvency Process was mooted had cumulatively both prior to, and after initiation of CIRP has shown a fraudulent and malicious intent with a view to defraud the creditors of the CD and abuse of the process of the law as contemplated under IBC, 2016. During the course of oral submissions, on the aspect of fraud and how it vitiates the proceedings, Ld. IRP relied on the following decisions of the Hon'ble Supreme Court of India, namely



- (i) A.V. Papayya Sastry & Ors V. Government of A.P & Ors. Delivered on 07.3.2007 reported in Indian Kanon - <http://indian.kanoon.org/doc/1154981>.
- (ii) S.P. Chengalvaaraya Naidu V. Ingannath reported in Indian kanon - <http://indian.kanoon.org/doc/1151521>.

After considering several authorities, including the decision rendered by it in S.P.Chengalvaaraya Naidu's case as cited above, the Hon'ble Supreme Court has held as follows:

"Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed; "Fraud avoids all judicial acts, ecclesiastical or temporal".

"No judgment of a court, no order of a Minister, can be allowed to stand, if it as been obtained by fraud."

Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants."

"Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim"

22. From the facts disclosed in the application and having come to a conclusion the main Company Petition in C.P.IB



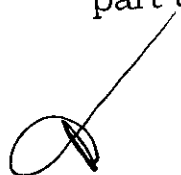
No.358/ND/2018 had been actuated by a fraudulent or malicious intent we are constrained to recall the order of admission secured by the Respondents in relation to the CD for fraudulent purposes and maliciously initiating the present proceedings under Section 10 of IBC, 2016.

23. Further, in the case of fraud being established or demonstrated this Tribunal has the power to pierce the Corporate veil and see as to who are acting behind the Cloak or veil and it is clearly evident that the respondents are behind the fraudulent initiation of the present proceedings in the main CP before this Tribunal and hence should be imposed of the penalty as contemplated under Section 65 of IBC, 2016. In the circumstances, each of the four respondents shall pay a sum of Rs.10,00,000/- (Total Rs.40,00,000/-) as penalty which shall be deposited within 45 days of this order in the Bank Account of the CD as maintained by the IRP in trust. The above said amount upon receipt shall be duly disbursed to the 3,280 customers of the CD on a pro-rata basis in accordance with their claims as disclosed in the report filed on 9.8.18 by the IRP.


In addition having pierced the corporate veil and identified the respondents to be the persons behind the CD who had initiated the CIRP and had also proposed the IRP, all the fees and expenses as claimed by IRP shall also be defrayed by the respondents.

In the circumstances, the order of admission and CIRP initiated in relation to the CD Alply Private Limited dated 12.07.2018 is recalled. The authorities, including the Regional Director, Northern Regional or the Registrar of Companies, NCT of Delhi and Haryana are free to initiate such action as they may contemplate against the CD and its Directors. The moratorium as declared under Section 14 of IBC, 2016 in view of the recall of the order of admission dated 12.07.2018 also stands withdrawn.

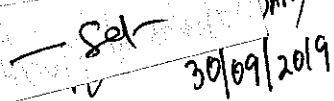
The instant application as filed by the IRP/Applicant is allowed in part to the extent of applicability of section 65 of IBC,2016.



A copy of this Order shall be duly communicated to IBBI, Regional Director, MCA and ROC of NCT of Delhi & Haryana for necessary action as these authorities may contemplate.



K.K. VOHRA
MEMBER (TECHNICAL)



R VARDHARAJAN
MEMBER (JUDICIAL)