

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

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

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: 05th February, 2020 ✓

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

Parties/Counsels Present:


For the Petitioner : Ms. Amrita Jain

For the Respondent : Ms. Suritha Sukendran

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.307/BB/2019 is filed by M/s.Learning Candid India Private Limited (hereinafter referred to as 'Petitioner/Financial Creditor') U/s 7 of the IBC, 2016, R/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.AlfaPeople IT Services Private Limited, on the ground that it has


Page 1 of 11

committed default for total amount of Rs.12,98,467/- (Rupees Twelve Lakhs Ninety Eight Thousands Four Hundred and Sixty Seven Only) including interest.

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

(1) M/s. Learning Candid India Private Limited ('Petitioner/Financial Creditor') incorporated on 24.07.2013, bearing CIN:U72900KA2013PTC070292 having registered office at #647/1, 1st Main, 1st Stage, Indiranagar, 100 Ft. Road, Bangalore-560038.

(2) M/s. AlfaPeople IT Services Private Limited ('Respondent/Corporate Debtor'), having CIN: U74900KA2015PTC079675 incorporated on 06.04.2015. Its Nominal Share Capital of Rs.1,00,000/- (Rupees One Lakh Only) and Paid up Share Capital is Rs.1,00,000/- (Rupees One Lakh Only).

(3) It is stated that there is an Inter-Corporate Loan Agreement executed between the parties on 09.02.2017 ('Agreement') through which the Petitioner extended loan for Rs. Rs.30,00,000/- , which was to be repaid by the Corporate Debtor, after the lock-in period of 12 months, within a period of 18 months from the disbursement, with an interest of 18% per annum on the outstanding loan amount, payable quarterly. The Corporate Debtor made payments against the due loan amount on various occasions but failed to repay the entire loan amount in full along with interest. The Financial Creditor, as a good will gesture, based on the assurances of the Corporate Debtor that the debt amount shall be paid soon, did not initiate any legal action against the Corporate Debtor.

(4) It is stated that the Financial Creditor issued various request letters to the Corporate Debtor, with regard to the repayment



of the remaining due amount. The Corporate Debtor responded to one of the request letter from the Financial Creditor stating that they are unable to repay the interest and principal amount, on time, due to financial exigencies. The instant Company Petition is maintainable as per the law, since the dues owed to the Financial Creditor falls within the definition of 'Financial Debt' under Section 5(8) of the IBC, which states that 'financial debt' means a debt along with interest, if any, which is disbursed against the consideration for time value of money and includes money borrowed against the payment of interest. The relationship of the Financial Creditor with the Corporate Debtor is a pure financial contract under a Loan Agreement. Relevant portions of the Standard Terms and Conditions, which were a part of the Agreement signed between the Parties have been reproduced below verbatim:

"a. The Lender hereby agrees to lend to the Borrower a sum of Rs.30,00,000/- (Rupees Thirty Lakhs Only) for the requirements of the Borrower, (which loan is hereinafter referred to as the 'Loan') within a period of 1 week (7days) from the date of execution of this Agreement.

b. The Loan shall carry interest at the rate of 18% per annum on the outstanding balance.

c. The Loan shall have a lock in period of one year from the date of receipt and shall be repaid after 12 months to 18 months..."

(5) It is also stated that as per the Agreement, the loan amount of Rs.30,00,000/- was disbursed to the Corporate Debtor on 14.02.2017. The Clause 1 Section 4 of the IBC provides that this Part shall apply to matter relating to the insolvency and liquidation of the Corporate Debtors where the minimum amount of default is One Lakh Rupees. In the instant case, the



default amount is Rs.12,98,467/- which is inclusive of principal amount and interest and hence the default amount exceeds the minimum default amounts as specified under IBC. In *Innoventive Industries Ltd. Vs. ICICI Bank*¹, the Hon'ble NCLAT held that it is evident that even if a debt is disputed, if the amount is more than Rupees One Lakh, the application under Section 7 is maintainable.

(6) It is stated that the Financial Creditor has extended the said loan to the Corporate Debtor under an Inter-Corporate Loan Agreement executed between the parties in accordance with Section 186 of the Companies Act, 2013 read with Companies (Meetings of Board and its Powers) Rules, 2014. The provisions of Section 186 of the Act provides that a Company can directly or indirectly, give any loan to any person or other body corporate, exceeding sixty percent of its paid-up share capital, free reserves and securities premium account or one hundred percent of its free reserves and securities premium account, whichever is more, with prior approval by means of a special resolution passed at a general meeting. In the instant case, the Financial Creditor has passed the requisite special resolution of the Extra-Ordinary General Meeting of the Company held on 07.02.2017 in accordance with the applicable provisions of the Act for granting of loan to the Corporate Debtor.

(7) It is also stated that the Corporate Debtor is not a related party of the Financial Creditor as defined under Section 2(76) of the Companies Act, 2013, and therefore the provisions of Related Party Transactions as provided under Section 188 of the Companies Act, 2013 and Companies (Meetings of Board and its Powers) Rules, 2014 is not applicable to the subject matter of the instant case. The extending of loan to a body corporate

¹ (2018)1 SCC 407



is not the main Object of the Financial Creditor and it is also not a business line of the Financial Creditor. The Financial Creditor is neither a Banking Institution nor a Non-Banking Financial Institution and has extended loan to the Corporate Debtor only in pursuance of the provisions of the Companies Act, 2013 and the Rules made thereunder. Furthermore, the books of accounts as well as the Financial Statements of the Financial Creditor discloses the fact of extending of loan to the Corporate Debtor in accordance with the provision of Section 186 of the Act. The Respondent had failed to pay the amount and also did not raise any dispute by way of reply. Therefore the instant Company Petition is filed in accordance with law.

3. The Corporate Debtor, though has not filed any Statement of Objection, however filed a Memo of Submission dated 09.01.2020, by inter alia contending as follows:

(1) They have agreed that they have executed Inter-Corporate Loan Agreement dated 09.02.2017. The Corporate Debtor made payments, by instalments, against the due loan amount on various occasions amounting to a total of Rs.30,00,000/- i.e. Rs.10,00,000/- on 24.05.2018, Rs.10,00,00/- on 10.08.2018, Rs.5,00,000/- on 24.08.2018 and Rs.5,00,000/- on 24.12.2018. The amount paid is inclusive of interest at the rate of 18% per annum.

(2) It is also stated that the Corporate Debtor is unable to repay the said amount due to financial exigencies. In fact the said loan amount was obtained to temporarily tide over a financial crunch but unfortunately the Corporate Debtor had to face a series of unexpected setbacks in its business which exacerbated the situation and the Corporate Debtor is not in doldrums facing an uncertain future. The recession



has also adversely affected the business prospects of the Corporate Debtor.

4. Heard Ms. Amrita Jain, learned Counsel for the Petitioner, and Ms. Suritha Sukendran, learned Counsel for the Respondent. We have carefully perused the pleadings of the parties, and the extant provisions of the Code and the law.
5. The case is listed for admission on various dates viz. 26.09.2019, 16.10.2019, 28.10.2019, 08.11.2019, 13.11.2019, 21.11.2019, 06.12.2019, 18.12.2019, 10.01.2020, 24.01.2020, 31.01.2020 & 05.02.2020. The case is adjourned on all these dates due to various reasons, at the request of the Petitioner for compliance of office objections, serving the notice etc.
6. Ms. Amrita Jain, the learned Counsel for the Petitioner, while pointing out various averments made in the Petition and also in Written Arguments, as briefly stated supra, has further submitted that the debt and default in question are not in dispute, and the Respondent also accepted the same in their Memo of Submission. The instant Petition is filed in accordance with law and also suggested a qualified Resolution Professional namely Shri Surender Devasani, with Registration No.IBBI/IPA-001/IP-P00775/2017-2018/11348, who also filed Written Communication in Form-2 dated 26th August 2019, and necessary declaration. Therefore, she has urged the Adjudicating Authority to admit the case by initiating CIRP in respect of Corporate Debtor appointing IRP, imposing moratorium etc.
7. Ms. Suritha Sukendran, learned Counsel for the Respondent has also no objection to initiate CIRP, as the Company has become insolvent and the Company has less assets in comparison to its liabilities.



8. So far as the law with regard to initiation of CIRP is concerned, Hon'ble NCLAT vide order dated 15th May, 2017 passed in Company Appeal (AT) (Insolvency) No.1 & 2/2017 in the case of M/s.Innoventive Industries Limited vs. ICICI Bank & Anr. has dealt the issue of admission of a case filed under Section 7 of the Code, under Paras 55 to 58, which are extracted below:

"55. Process of initiation of Insolvency Resolution process by a financial creditor is provided in Section 7 of the I&B Code. As per sub-section (1) of Section 7 of the I&B Code, the trigger for filing of an application by a financial creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the financial creditor shall make an application in prescribed form and manner and with prescribed documents, including:

- i. "record of the default" recorded with the information utility or such other record or evidence of default as may be specified;*
- ii. The name of the resolution professional proposed to act as an interim resolution professional; and*
- iii. Any other information as may be specified by the Board.*

56. The procedure once an application is filed by the financial creditor with the Adjudicating Authority is specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of the I&B Code:

"(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)."

57. Sub-section (5) of Section 7 of the I&B Code provides for admission or rejection of application of a financial creditor. Where the Adjudicating Authority is satisfied that-.....the documents are complete or incomplete.



58. *The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the financial creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the financial creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority's summary adjudication, though limited to 'ascertainment' and 'satisfaction'.*"

The Hon'ble Supreme Court has also upheld the above judgement in Civil Appeal Nos.8337-8338 of 2017 vide judgment dated 31st August, 2017. The Hon'ble Supreme Court has adverted to Section 7, at para 28, which reads as under:

"28. When it comes to financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at



the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

9. As stated supra, the debt and default in question are not in dispute and on the other hand, the Corporate Debtor has also accepted the debt, and the Respondent is prima facie found to be insolvent. The instant application is filed strictly in accordance with the extant provisions of the Code, and debt and default established and also suggested a qualified Resolution Professional namely Shri Surender Devasani, with Registration No. IBBI/IPA-001/IP-P00775/2017-2018/11348, who also filed written Consent in Form-2 on 26.08.2019, by inter alia declaring that no disciplinary proceedings pending against him with the Board or the Indian Institute of Insolvency. Therefore, he is provisionally eligible to be appointed as IRP. Hence, the instant Company Petition is fit case to admit by initiating CIRP appointing by IRP, and declaring moratorium etc. in respect of the Corporate Debtor.
10. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, U/s 7(5)(a), and other extant provisions of the IBC, 2016, we hereby admitted C.P.(IB)No.307/BB/2019 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of



Respondent/Corporate Debtor with the following consequential directions:

- 1) **Shri Surender Devasani**, bearing **Registration No. IBBI/IPA-001/IP-P00775/2017-18/11348**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/ Corporate Debtor namely M/s.AlfaPeople IT Services Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
 - e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;



- f)* The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- g)* The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
- 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full cooperation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) Post the case for report of IRP on **11.03.2020**.



(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Puja