

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

MA/172/2019 in CP/559/IB/CB/2017 filed
under Section 60(5)(c) of the Insolvency and
Bankruptcy Code, 2016

In the matter of **M/s. Inasra Technologies Private Limited**

Mr. S. Kannan

... Applicant/Liquidator

Vs.

1. **Mr. Karthigeyan Srinivasan,**
2. **Mr. Yogendra Vasupal**
3. **Mr. Sachit Singhi &**
4. **M/s. Amazon Web Services**

... Respondents

CORAM:

R.VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : Mr. M.S. Viswanathan, Advocate
For Respondent 1 : Ms. K.Anusarala & E.B. Aswini, Advocates
For Respondent 2 : Mr. Yogendra Vasupal, in person
For Respondent 3 : Mr. Aditya Mukerjee, Advocate
For Respondent 4 : Mr. Anand Johnson B, Advocate

ORDER

Per: R.VARADHARAJAN, MEMBER (JUDICIAL)

Order delivered on 4th of November, 2019

1. This Application has been filed under Section 60 (5) (c) of the Insolvency and Bankruptcy Code, 2016 (for short, I&B Code, 2016) by the Liquidator viz., Mr. S. Kannan, appointed by this Tribunal vide Order

dated 26.09.2018 seeking for the following directions/reliefs:-

- a. *To direct the 1st Respondent to hand over the entire documents, and other material which is in possession of the corporate debtor during the process of CIRP and,*
- b. *To direct the 2nd and 3rd Respondents provide the books of accounts, Vouchers, financial statements for the year ended March 31, 2017 and March 31, 2018, all the schedules and details pertaining to the year ending 31 March, 2016. Also the audited balance sheet for the year ending 31.03.2017, 31.3.2018 and upto 31 Dec., 2018 and,*
- c. *To direct the 2nd and 3rd Respondents to provide Provident Fund returns, proof of employment and challans paid and list of employees and*
- d. *And to pass such further or other order as it deems fit in the above circumstances of the case and thus render justice.*

2. The basis for the filing of this Application by the Liquidator as stated in the Application is as follows:-



The Corporate Insolvency Resolution Process (CIR Process) was initiated by this Authority on 15.09.2017 and at the time of admitting the Application, the 1st Respondent viz., Mr. Karthigeyan Srinivasan was appointed as Interim Resolution Professional (IRP) and subsequently he was confirmed as Resolution Professional (RP). However, at the time of Liquidation of the Corporate Debtor, as already stated, the Applicant was appointed as the Liquidator and not the RP. In the circumstance, the records and accounts of the Corporate Debtor were required to be handed over to the Liquidator by the IRP/RP duly updated as upto the date of the Order of the Liquidation. More particularly, the updated accounts for the year ended 31.03.2017 as well as for the year ended 31.03.2018. However, in view of the same not being handed over by the erstwhile IRP/RP appointed by this Authority, the Liquidator was not in a position to verify the claims received from the creditors.

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3. A repeated refrain was taken by the IRP/RP as evident from the averments in the above Application that in view of the fact that the matter was pending before the Hon'ble NCLAT as well as before the Hon'ble Supreme Court as a *status quo* order was in vogue till 21.03.2018, not much activity was able to be carried out in relation to the CIR Process of the Corporate Debtor and subsequent to the removal of the *status quo* Order, though IRP/RP was able to perform certain functions, however, in view of the fact that all the records pertaining to the Corporate Debtor were maintained in a "cloud storage" and due to non-payment of fees for the 'cloud storage' to the service provider, he was not able to retrieve the electronic data, and in the circumstance, no details were available to be provided on the part of the IRP/RP to the Liquidator. Even though, the Applicant viz., the Liquidator was subsequently ready to pay the fees for the retrieval from the 'cloud storage' and thereby have an access to the electronic data maintained therein, since it was represented by the 2nd Respondent that even though

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they earlier tried to open the “cloud storage” for the year ended pertaining to 2017-2018, they were not able to do so as the data which was stored in the ‘cloud storage’ have been deleted due to non-payment of fees of a sum of Rs.65,000/-. It is also averred in the Application that the Audited Financial Statement is available only for the year ended 31.03.2016 although the party-wise details of the accounts were not available. It is also pointed out by the Applicant viz., the Liquidator that even though the employees of the Corporate Debtor have approached him in relation to the closure of their Provident Fund account or for transfer of their accounts, but the Applicant is unable to proceed as the Respondent Nos.2 and 3 have failed to furnish the details in relation to the employees’ contribution towards the Provident Fund and other documents. Taking into consideration the above facts, it is stated by the Applicant that, in effect, he is unable to perform effectively as Liquidator to the Corporate Debtor, and in the said circumstance, the above



directions/reliefs are sought for against the Respondents.

4. The record of the proceedings before this Tribunal discloses that vide Order dated 17.06.2019, taking into consideration the facts and circumstances of the case, this Authority was pleased to *suo motu* order M/s. Amazon Web Services, being the service provider having the 'cloud storage' maintained on a commercial basis, as a proper and necessary party to the proceedings, under the circumstances stated in the said order. Consequent to the same, upon the issuance of notice, it is seen that the said M/s. Amazon Web Services has also duly participated in the proceedings in relation to the present Application by filing the Counter Affidavit as well as other pleadings. It is also seen that the 1st Respondent, being the erstwhile IRP/RP has also filed the Counter Affidavit dated 08.04.2019. In addition, the 2nd Respondent has also filed an Affidavit dated 09.04.2019 and subsequent to the same, other pleadings and



documents also seems to have been filed. The parties were heard in detail on 22.10.2019, i.e. today.

5. During the course of submissions, the Learned Counsel for the Liquidator reiterated the facts as contained in the Application and sought to impress upon this Tribunal that he is not in a position to perform the duties as cast upon him under the provisions of the I&B Code, 2016 read with all attendant Rules and Regulations, in view of lack of particulars being made available to him by the Respondents including the one impleaded under the directions of this Tribunal viz., M/s. Amazon Web Services.

6. On the part of the 2nd Respondent, who appeared in person, it was vehemently contended that he has been fully co-operating with both the IRP/RP since the commencement of CIR Process as well as the Liquidator throughout. It is also brought to the notice of this Authority by the 2nd Respondent appearing in person that soon after the initiation of CIR Process, he



approached the IRP/RP to take note of the fact that all the information pertaining to the Corporate Debtor are available in the 'cloud storage' and that the payment of fees needs to be effected as the 'cloud storage' is maintained on commercial basis, and in case the payment of the same was not made, there is every possibility that M/s. Amazon Web Services, being 4th Respondent, will suspend and erase the data and information as maintained in relation to the Corporate Debtor from the 'cloud storage'. Despite the same, and even though the IRP/RP appointed by this Authority, as evident from the resume as annexed along with the documents set filed by the 2nd Respondent, being fully aware of the consequence of non-payment of the fees, in order to retrieve the data from the 'cloud storage', the erstwhile IRP/RP had not bothered to pay the fees which primarily is in the nature of "essential services" as contemplated under the provisions of Section 14 of the I&B Code, 2016, which are required to be maintained to keep the Corporate Debtor on a 'going concern basis' for which payment was required to be

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made by the IRP/RP from the available funds. The non-payment of the said fees and non-renewal with M/s. Amazon Web Services has resulted in the suspension, cancellation and erasure of the data and information as maintained in the 'cloud storage' which has cumulatively resulted in the lack of details of accounts made available to the Liquidator by the Respondents. It is also pointed out by the 2nd Respondent that whatever co-operation which was required to be extended by him as well as the 3rd Respondent, being the Board of Directors of the Corporate Debtor, whose powers stood suspended due to CIR Process and being the personnel of the Corporate Debtor, has not yielded any tangible result by way of information to be provided to the Liquidator as sought for, and in the circumstances, he cannot be blamed for the same.

7. On the part of the 4th Respondent, the Learned Counsel for the 4th Respondent contends that despite the suspension and erasure of data and information



from the 'cloud storage', as per the agreement entered into between the Corporate Debtor and M/s. Amazon Web Services, the backup storage of the data uploaded in the 'cloud storage' was required to be maintained in any case by the Corporate Debtor and if the same had been done by the Corporate Debtor, which was being managed by the Respondent Nos. 2 and 3 prior to the initiation of CIR Process, all the information as sought for by IRP/RP and Liquidator could have easily been furnished, and under the circumstances, it is only the Respondent Nos.2 and 3, who are required to be blamed as the Respondent No.4 had *bona fide* exercised its right of termination of the agreement as entered into between the Corporate Debtor and M/s. Amazon Web Services which has resulted in the deletion of the information stored in the 'cloud storage' of the Corporate Debtor with it.

8. The Learned Counsel for the Respondent No.4 in this regard has also pointed out the AWS Customer Agreement in the typed set of documents filed along with the pleadings of the Respondent No.2, and more



particularly has referred to the Clause 4.3, which is extracted below for ready reference:-

“4.3 Your Security and Backup. You are responsible for properly configuring and using the Service Offerings and otherwise taking appropriate action to secure, protect and backup your accounts and Your Content in a manner that will provide appropriate security and protection, which might include use of encryption to protect Your Content from unauthorised access and routinely archiving Your Content.”

9. We have carefully considered the rival submissions as well as the pleadings and the documents as filed by the respective parties before this Tribunal. From the e-mail correspondences, as stated to have been transpired and which has also been enclosed along with the typed set filed by the Respondent No.2, it is seen that soon after the initiation of CIR Process, the Respondent No.2 has made every effort to intimate the IRP/RP appointed by



this Tribunal to maintain the accounts of the Corporate Debtor with M/s. Amazon Web Services by remitting a sum of Rs.65,000/- failing which would result in wiping out of the data from the 'cloud storage' of the Respondent No.4. However, the IRP/RP seems to have not bothered despite forwarding of notice by the Respondent No.2 to maintain the 'cloud storage' facility services availed by the Corporate Debtor with M/s. Amazon Web Services and there seems to be a deliberate action or inaction on the part of the erstwhile IRP/RP, all of which is contrary to the provisions of Section 14 of the I&B Code, 2016. In this connection, it is pertinent to note that as rightly pointed out by the Respondent No.2, the IRP/RP is also a computer professional as evident from his resume of the said IRP/RP, being the Respondent No.1 herein attached at pages 29 to 34 of the typed set filed by the 2nd Respondent.

10. A perusal of Section 14 of the I&B Code, 2016 in this regard and more particularly Section 14(2) requires 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. Even though the expression the 'essential goods or services' has not been defined in the provisions of the I&B Code, 2016, however, Regulation 32 of IBBI (IRP for Corporate Persons) Regulations, 2016 defines the essential goods and services as referred to in Section 14(2) which *inter alia* it is seen includes, "information technology services". Thus, it is seen that every onus is made upon the IRP/RP to maintain the essential services at the very least of the Corporate Debtor to maintain it as a 'going concern' as required of him under Section 20 of the I&B Code, 2016.

11. On the part of the Respondent No.4, who was impeladed as such under the directions of this Tribunal, it is seen that subsequent to the initiation of the CIR Process and when the CIR Process was pending, the essential services viz., the information technology services could not have been terminated or



suspended by the 4th Respondent viz., M/s. Amazon Web Services and even assuming that certain payments were due, which it claims to be a sum of Rs.65,000, the course which should have been adopted on the part of M/s. Amazon Web Services is to have filed the claim as an 'Operational Creditor' of an 'Operational Debt' before the IRP/RP, upon publication effected by the IRP calling for the claims from the creditors of the Corporate Debtor, and further, in relation to the amount which may be due during the period of CIR Process for providing essential services, the payments could have been sought for on a current basis from IRP/RP, and thus, we do not find any justification for the said M/s. Amazon Web Services, who have simply gone on to terminate the agreement relating to the maintenance of 'cloud storage' of the Corporate Debtor, that too, without notice, or for the suspension of the services and taking it to the extreme end of cancelling or erasing the storage in entirety being the valuable data and information of the Corporate Debtor. When a question was posed

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specifically by one of us to the Counsel for the Respondent No.4 as to why a drastic action should not be initiated against the 4th Respondent for suspension, termination and erasure of the data and information as maintained in relation to the Corporate Debtor from the 'cloud storage' for arrears of payment of fees despite the moratorium being in operation? It was represented by the Learned Counsel for the said Respondent No.4 that M/s. Amazon Web Services was not aware of the CIR Process proceedings, and in the circumstance, it resulted in suspension, termination and erasure of the data and information as maintained in the 'cloud storage' pertaining to the Corporate Debtor. The above reasons, we are unable to accept as the ignorance of law of land is no excuse and cannot also be condoned.

12. On the part of the personnel of the Corporate Debtor, it is seen that under Section 19 of the I&B Code, 2016, they are required to extend co-operation to Interim Resolution Professional which has been made



expressly applicable to the liquidation process as well as the 'Liquidator', by virtue of Section 34 (3) of the I&B Code, 2016 with the substitution of the term 'Interim Resolution Professional' with that of the Liquidator. The co-operation, which in the present instance sought by the Liquidator (i.e.) the Applicant herein as evident from prayers (b) and (c) extracted in paragraph 1 *supra* pertains to the production of the records and documents as enunciated therein. Reference to Clause (c) of sub-Section 1 of Section 17 of I&B Code, 2016 discloses that the Officers and Managers of the Corporate Debtor are required to provide access to such documents and records of the Corporate Debtor as may be required by the Interim Resolution Professional in this case, the Liquidator. Since 'documents' and 'Records' have not been defined under the I&B Code, 2016 nor under the Regulations, namely Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 even though 'books of the Corporate Debtor' stands defined in Regulation 2(1) (a) of the said Regulations which falls back on the



definition as contained in Section 2(13) and Section 2 (40) of the Companies Act, 2013, reference to the very same Act, namely Companies Act, 2013 (Act) shows that 'document' has been defined in Section 2(36) under the Act as follows:-

“document” includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form”

It is to be noted that recourse can be taken to the provisions of Companies Act, 2013 in case the term is not defined under I&B Code, 2016 by virtue of Section 3 (37) of the said Code. Definition of 'document' as extracted above can be either in paper or in electronic form. Thus, taking into consideration the above position of law as well as the agreement as entered into between the Corporate Debtor and the 4th Respondent, 2nd and 3rd Respondents are required to produce the



documents and books of accounts as sought for by the Liquidator and cannot point fingers at the 1st or 4th Respondent. Similarly, the IRP/RP and the 4th Respondent, as already dealt with in the earlier paragraphs, in view of a duty cast upon them during the moratorium period, similarly cannot also wash their hands off in relation to the documents and records stored by way of data in electronic form including the books of accounts as alleged to have been maintained in 'cloud storage' being an information technology services falling under the category of 'essential services' is required to maintain the same without termination, even in case of arrears due to make a claim taking recourse to the Provisions of I&B Code, 2016 and to continue providing services during CIR Process of the Corporate Debtor and seek for payment of current dues, if any, from the IRP/RP in relation to the same.

13. By taking into consideration all the above, there seems to be dereliction of duty on the part of the



Respondent Nos.1 to 4 by not providing the necessary information to the Applicant viz., Liquidator to perform his function effectively and it will be of no avail of them to point an accusing finger at each other all of which seriously undermines the interest of creditors including employees of the Corporate Debtor. Therefore, we hereby direct each of the Respondents either individually or jointly to provide all the data and information to the Liquidator as sought for, particularly, in relation to the financial statements for the year ended 31.03.2017 as well as for the year ended 31.03.2018 within a period of three weeks from today. It is evident from the averments made in the Application and as well as during the course of submissions of the Applicant and R2 and R4 as R1 did not choose to appear at the time of oral submissions, that the IRP/RP has grossly failed in his duty to maintain even the 'essential services' of the Corporate Debtor, which is required to be taken note of by the Insolvency and Bankruptcy Board of India (IBBI), being the Regulator and a suitable action be initiated against



the IRP/RP viz., Karthigeyan Srinivasan, after due enquiry, as contemplated under the Scheme of the I&B Code, 2016 and the Regulations framed there under by IBBI in relation to conduct of IRP/RP of Corporate Persons during the CIR Process as the Regulator is the person which can take the action for the omissions and commissions purported to have been committed by the IRP/RP as evident in the present instance for which purpose the copy of this Order be forwarded by the Registry to IBBI.

14. With the above directions, this Application is accordingly, ordered. The Applicant viz., Liquidator is directed to file the report about the compliance on the part of the Respondents, within 4 weeks from today.

Ordered accordingly.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Mrs. P. ATHISTAMANI