

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 24.06.2020

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. 180/BB/2018	For hearing – IA 198/2020 - CIRP	Sec 9 of I&B code 2016	M/s Skyways Technics A/S	Gowtham Raghunath	M/s Air Peagus Pvt Ltd	Madhugiri Venkatarapa, RP, Hemath R, Advocate for RP

ADVOCATE FOR PETITIONER/s:

Ms. M.V. Sudarshan, RP.

ADVOCATE FOR RESPONDENT/s:

ORDER

Heard Mr. M.V Sudarshan, Resolution Professional through Video Conference.
I.A. No. 198 of 2020 is disposed of by separate order.

[Signature]
MEMBER (T)

[Signature]
MEMBER (J)

By
Verified
Court Officer

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

C.P. (IB)No.180/BB/2018
U/s.9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016
And
I.A No.198/2020
U/s. 54 of the IBC, 2016

Mr. Madhugiri Venkatarayappa Sudarshan

Resolution Professional of

M/s. Air Pegasus Private Limited

No.984/13, 8th Main,

Girinagar II Phase,

Bengaluru – 560 085

- Applicant/RP

Date of Order: 24th June, 2020

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

Parties/Counsels Present:

Resolution Professional : Madhugiri Venkatarayappa Sudarshan

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.198/2020 in C.P.(IB)No.180/BB/2018 is filed by M. V. Sudarshan, Resolution Professional of M/s. Air Pegasus Private Limited ('Applicant'), U/s. 54 of the IBC, 2016, by inter alia seeking to dissolve the Corporate Debtor (M/s. Air Pegasus Private Limited).
2. Brief facts of the case, which are relevant to the instant case, are as follows:



- (1) Initially, C.P.(IB)No.180/BB/2018 filed by M/s. Skyways Technics A/s. (Petitioner/Operational Creditor), U/s. 9 of the IBC, 2016, read with Rule 6 of I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Air Pegasus Private Limited (Respondent/Corporate Debtor), and it was admitted by the Adjudicating Authority, by an Order dated 23.08.2019 by initiating CIRP in respect of the Corporate Debtor; appointing Mr. Shirley Mathew as IRP, imposing moratorium etc. Subsequently, the IRP was replaced with existing RP and to appoint Mr. M. V. Sudarshan as Resolution Professional (RP) and the same was allowed by the Adjudicating Authority, by an Order dated 27.11.2019.
- (2) In pursuant to the notification issued by the Resolution Professional, though three (3) Expression of Interest (EOI) were received but none of them finally submitted their Resolution Plan. With the hope of getting a proper Resolution Plan, the RP filed I.A.No.85 of 2020, seeking extension of time and the same was extended for a period of 90 days beyond 180 days starting from 19th February, 2020 till 19th May, 2020, vide its Order dated 7th February, 2020. The Resolution Professional has till date filed five detailed progress reports before this Tribunal. The Resolution Professional has been diligent in performing his statutory duties with the support of the CoC and has not missed any deadlines by causing inordinate delays.
- (3) The Resolution Professional has appointed following valuers on 12th December, 2019 for conducting the valuation of the assets of the Company as on CIRP commencement date.



Sl No.	Name of the Valuer	Reg. No.	Class of Assets.
1	H.S.Arun Kumar	IBBI/RV/02/2019/11585	Plant & Machinery
2	Arun Karagada Lakshmana Rao	IBBI/RV/02/2019/12143	Plant & Machinery
3	Laxminarayana Joisa H	IBBI/RV/04/2019/11972	Financial Assets
4	Ramanathan Bhuvaneshwari	IBBI/RV/06/2019/11182	Financial Assets

Mr. Shyson Thomas, one of the suspended Directors of the CD has expressed his inability in physical identification of the assets of the CD to the valuer for conducting the valuation of the assets of the Company. Mr. Shyson Thomas has made following statements in his mail to valuers with a cc to RP on 18.12.2019:

- (a) *“Air Pegasus is a Service Industry (Regional Airline) issued Air Operator Permit (AOP) by the Ministry of Civil Aviation & DGCA (Director General of Civil Aviation).*
- (b) *Since we are not into manufacturing, we do not have investments in Plant and Machinery, but we have deployed our Ground Support Equipments like, Passenger Coaches, Tractors, Baggage Trollies, Water Carts, Toilets Carts etc. These equipment are lying idle in following Airports:*
- (1) Trivandrum Airport*
 - (2) Mangalore Airport*
 - (3) Madurai Airport*
 - (4) Hubli Airports Etc.*
- (c) *Again, these Equipments are confiscated by Airport Authority of India, for want of Airport dues to be cleared by Air Pegasus. All these equipments are totally rusted*



and became scrap due to the non-usage since last 3 years.

(d) As regards the Buses & Tractor, same is the situation. Here again, since the Buses were plying within the Operational areas of Airport, we had not paid Road Tax, which amounts to Rs.6.00 Lakhs per year. Thus, each buses road Tax is accumulated to Rs.18 Lakhs, since operations stopped. The moment, we tow out of the buses somehow, from airport, RTO will catch the Vehicles.

(e) Other than the above, we only have computers, printers and walkie-talkies were available in our airport office and this airport office has been taken away by the BIAL as operation ceased. Precisely, CD could be unable to show any of the machineries since all are neither confiscated nor ceased by the airport authorities.”

- (4) The Company did not have any realisable financial assets. Financials assets like deposits and loans and assets are of more than 4 years either these assets are barred by limitation to make a claim or adjusted by the Creditors against their claims. The only one valuable asset was of intangible in nature that is the Air Operator Permit (AOP), a licence issued by Director General of Civil Aviation. Since the Company was under CIRP, intangibles are never be the part of valuation, however the suspended Director was very much hope on getting a Resolution Applicant based on this licence validity along. The validity of this licence was till 23.03.2020, now this licence is also expired and hence this licence has also lost its value. Summary of Liabilities admitted/estimated by IRP/RP.



Sl. No.	Name of the Creditor	Amount Claimed in Rs.	Amount Admitted/Estimated Amt. in Rs.
1	Secured Financial Creditor	42,53,46,175	42,53,46,175
2	Workers & Employees	-	-
3	Operational Creditors - Other than Worker & Employees	6,13,85,453	6,13,85,453
4	Operational Creditors - Estimated but claims not made	-	4,34,45,086
5	Unsecured Loans - Related Party Estimated but claims not made	-	14,72,67,462
6	Unsecured Loans - Others Estimated but Claims not made	-	6,41,14,315
	Total	48,67,31,629	74,15,58,491

- (5) As per relevant regulation, the Resolution Professional has published Form-G, accordingly the RP has received three EOIs. In pursuance Sub-Regulation 12 of Regulation 36A of the IBBI (CIRP) Regulation, 2016, the final list of Prospective Resolution Applicants is under:

Sl. No.	Name & Address of the Prospective RA	Relationship
1	Mr. Shyson Thomas Add: 21/15, MG Road, Landmark, Buildings, 1 st Floor, Bangalore - 560 001	Suspended Director of the CD. (MSME Company)
2	Mr. Umme Tameem Add. NO.21/1, Frazer Town, Bangalore - 560.005	Individual & Creditor of CD
3	M/s. Décor Aviation Pvt. Ltd. Add: No.22 & 23, 3 rd Main Road, Air View Colony, HAL Post, Bangalore - 560 017	Associate Company of CD

- (6) Since the Corporate Debtor fall under MSME Sector, Section 240A (1) provide relaxation to the owners of MSME. The provisions of clauses (c) and (h) of Section 29A shall not apply



to the Resolution Applicant in respect of CIRP of any micro, small and medium enterprises to the owners. Hence, RP has accepted the EOI of the suspended Director of the Corporate Debtor. The COC was constituted by IRP, the CoC of Air Pegasus comprises of one Financial Creditor, the Canara Bank, having 100% voting rights. The Sixth meeting of the CoC was convened on 29th May, 2020, through Video Conferencing using Google Meet with ID meet.google.com/cxb-rxua-kcn, at 5.00 P.M., wherein it is inter alia approved for the dissolution of the Corporate Debtor M/s. Air Pegasus Private Limited with immediate effect and also the Applicant as Liquidator for the purpose and permitted to file necessary Application before the Tribunal.

- (7) Since Fair Value and Liquidation Value being NIL and the CD is inoperative from 2015-16 and onwards, there would not serve any purpose to continue the liquidation process. Hence, the present Application.
3. Heard Shri M.V.Sudarshan, Resolution Professional, through Video Conference. We have carefully perused the pleadings of the case along with 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 Code, can pass appropriate order(s) in the interest of speedy justice.
6. The above facts and circumstances of the Case fully 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 no assets exists in the Company, as declared by the Resolution Professional, 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 as prayed by the Resolution Professional. The instant Application is filed in accordance with law and the Resolution to dissolve the Corporate Debtor was approved by the Sole COC, as detailed supra.
7. 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.180/BB/2018 and I.A.No.198/2020, are hereby disposed of with the following directions:

- (1) It is hereby dissolved the Applicant Company, M/s. Air Pegasus Private Limited., with immediate effect.
- (2) 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;
- (3) 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.
- (4) Personal liability/Guarantee of any Director/Promoter of the Corporate Company, if any, would not absolve them by virtue of this order. Any Party/Parties aggrieved by this Order are at liberty to take appropriate legal course of action.
- (5) No order as to costs.

**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**

**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**

Shruthi