

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

I.A. No.489 of 2020
U/s. 54 R/w Section 60(5) of Code, 2016
And Regulation 45(3)(b) of IBBI
(Liquidation Process) Regulations, 2016

&

C.P. (IB) No.156/BB/2017
U/s. 10 of IBC, 2016
R/w Rule 7 of I&B (AAA) Rules, 2016

Between:

Mr. Venkata Subbarao Kalva,

Liquidator of

M/s. Triumph India Software Services Pvt. Ltd.

(Under Liquidation)

R/a: #41/1, 11th Cross, 8th Main,

Jayanagar, 2nd Block,

Bengaluru - 560 011.

- Applicant/Liquidator

And

M/s. Triumph India Software Services Pvt. Ltd.

R/Off: No.375, 1st Floor, 1st Cross,

Judges Colony, R.T. Nagar,

Bengaluru - 560 032.

- Corporate Applicant

Date of Order: 4th December, 2020

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

For the Applicant/Liquidator

:

Mr. Venkata Subbarao Kalva



ORDER***Per: Ashutosh Chandra, Member (Technical)***

1. I.A. No.489 of 2020 in C.P. (IB) No.156/BB/2017 is filed by Mr. Venkata Subbarao Kalva, ('Applicant') Liquidator of M/s. Triumph India Software Services Private Limited ('the Corporate Applicant') under Section 54 read with Section 60(5) of the I&B Code, 2016 and Regulation 45(3)(b) of IBBI (Liquidation Process) Regulations, 2016, by *inter alia* seeking that the Corporate Debtor, Triumph India Software Services Private Limited (In liquidation) may kindly be ordered to be dissolved under Section 54 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Regulation 45(3)(b) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:
 - (1) Initially, the Application for initiation of Corporate Insolvency Resolution Process ('CIRP') was filed by the Corporate Debtor under Section 10 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 before the NCLT, Bengaluru Bench. The Application was admitted vide its order dated 5th April, 2018.
 - (2) The Adjudicating Authority, Bengaluru Bench passed an order for initiation of liquidation process of the Corporate Debtor vide its order dated 4th June, 2019, and appointed Mr. Venkata Subbarao Kalva (Regn. No.IBBI/IPA-002/IP-N00179/2017-2018/10655) as Liquidator pursuant to Section 34(1) of Insolvency and Bankruptcy Code, 2016.
 - (3) As per Regulation 12 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 the Liquidator made the public announcement on 8th June, 2019 in two newspapers namely Deccan Chronicle (English language) and Samyuktha Karnataka (Vernacular language). Initiation of liquidation process was intimated by the Liquidator to the Statutory



Authorities, Banks i.e., where Current Accounts were held by the Corporate Debtor, Insolvency and Bankruptcy Board of India, ICSI Insolvency Professionals Agency.

- (4) The Liquidator has intimated his appointment and manner of submission of their respective claims to the Financial Creditors, Operational Creditors, Employees and Statutory Authorities through letters dated 8th June, 2019. Further, the Liquidator received claims from creditors for Rs.8,89,60,551/- and the same was admitted by the liquidator. The list of Stakeholders was prepared on the basis of claims received and the proof of claims as per Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016 and the said stakeholder's list was annexed in the application.
- (5) The Liquidator prepared the asset memorandum as per the Regulation 34 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and submitted to this Adjudicating Authority on 3rd September, 2019 and the same is annexed with the Application.
- (6) As per the Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the preliminary report was submitted to the Adjudicating Authority on 20th August, 2019. Further, the progress reports were prepared and submitted by the Liquidator to the Adjudicating Authority at respective intervals as per Regulation 15 of Insolvency and Bankruptcy (Liquidation Process) Regulation, 2016.
- (7) The following assets were sold by the Liquidator:

Sl. No.	Assets	Date of Sale	Amount realized (Rs.)
1.	Maruti Swift Car-1	19 th July, 2019	2,39,286

2.	Office Equipment's which includes 2KVA UPS-1, Outdoor AC Unit-1, Aquaguard Filter-1	19 th July, 2019	22,322
3.	TVS Star Bike-1 and Honda Activa-1	19 th July, 2019	18,526
4.	Used furniture which includes Computers Tables & Office Tables-16, Chair-14, Wooden Cupboard-2	19 th July, 2019	27,678
5.	Computers & related accessories which includes Monitors-19, Laptops-4, CPU's-12, Printers'3, 12 port switches-6, Server Switch Rack-2	19 th July, 2019	38,136
6.	6000 sq. ft. site situated at Woodrich Enclave, Aneghatta Village, Kasaba Hobli, Devanahalli Taluk, Bangalore	28 th November, 2019	38,10,000
7.	Intangible Assets – Software content which includes English Course, Testing Course, CCNA & MBA Course Material	10 th June, 2020	5,500
	TOTAL		41,61,448

- (8) As per Section 53 of Insolvency and Bankruptcy Code, 2016, distribution was made to stakeholders out of the proceeds realized during liquidation process. The audited receipts and payments account were maintained by the Liquidator from 4th June, 2019 to 18th August, 2020. Further, the Liquidation Bank Account was closed on 6th August 2020 and a Bank

Account Statement for the period 4th June, 2019 to 6th August, 2020 is herein annexed with the Application.

- (9) An IA was filed on 24th September, 2018, under Section 66 of I&B, Code, 2016 by the RP against the promoter Directors of the Corporate Debtor, on examination of the various transactions by the RP and had reason to believe that the promoter Directors did not exercise due diligence in minimizing the potential loss to the creditors. The application was withdrawn after taking approval in ninth CoC meeting with a liberty to file the same during liquidation. Further, the Liquidator had filed application under Section 66 of IBC, 2016 before the Adjudicating Authority and at the hearing held on 4th December, 2019. The Adjudicating Authority made few observations and disposed off the said application with a liberty to re-file the same and again the Liquidator re-filed the application under Sec. 66 of IBC, 2016 against the promoter Directors of the Corporate Debtor on 23rd December, 2019 and hearing was held on 31st December, 2019, 9th January, 2020 and 13th February, 2020. The Application was disposed of by this Adjudicating Authority, vide order dated 13th February, 2020 received on 19th March, 2020.
- (10) As per the order passed by this Adjudicating Authority dated 13th February, 2020 the Liquidator furnished a copy of Forensic Audit Report on 18th September, 2019 to the promoter Directors of the Corporate Debtor through letter dated 20th March, 2020 for their replies on the findings given in the report. Reply was received from the promoter Directors of the Corporate Debtor through letter dated 3rd April, 2020. The Liquidator replied vide letter dated 17th April, 2020 to the promoter Directors. Further a reply was received from the promoter directors of the Corporate Debtor through letter dated 28th April, 2020.
- (11) The Liquidator on examining the transactions based on the Forensic Audit Report issued by M/s. Venu and Vinay, Chartered Accountants dated 18th November, 2019 submitted a report to the MCA along with supporting



documents seeking for further investigation into the matter vide letter dated 13th July, 2020. A copy of correspondence exchanged between the Liquidator and the suspended Directors of the Corporate Debtor was submitted in the fifth progress report to this Adjudicating Authority on 27th July, 2020 for the quarter ended 30th June, 2020, through mail.

(12) Further, meeting of the Screening Committee under the Chairmanship of Secretary, MCA was held on 22nd August, 2020 through video conference where the liquidator made a presentation covering all factual aspects relating to the avoidance of transactions in the above matter, the nature of the fraud suspected, the persons responsible for the same and status of the avoidance proceedings.

(13) Following are the cases filed against the Corporate Debtor

Sl. No.	Number of suit or appeal and court	Name and Address of Plaintiff/Appellant and his advocate	Name and Address of Defendant/Respondent and his advocate	Amount of claims (Rs.)	Date of filing
1.	O.S.26913/2013	Name of Plaintiff -V.S Sarath Chandran Address-No.16, 1 st Floor, 5 th Main, Ganganagar, R.T. Nagar Post, Bengaluru-560032. Name of Advocate – M/s. Kreioz Legal Solutions. Address of Advocate- Suit No.406, Regency Enclave, No.4, Magrath Road, Bengaluru-560025.	Defendant No.1- M/s. Triumph India Software Services Pvt. Ltd. Defendant No.2- Usha Mohan Address- No.1 and 2-No.22, D.Rajagopal Road, Sanjay Nagar, Bengaluru-560094. Name of Advocate- M/s. Just Law Advocates. Address of Advocate-No.24, Keshava Nivas, 2 nd Floor, Kalidasa Road, Gandhinagar, Bengaluru-560009.	Rs. 1,21,719/- along with interest at 24% w.e.f 01.12.2013 till the date of realisation along with costs of the suit.	11.12.2103

2.	61/2017	Name of Appellant M/s. Triumph India Software Services Pvt. Ltd. Address of Appellant- No.375, 1 st Floor, 1 st Cross, Judges Colony, R.T. Nagar, Bangalore 560032.	Name of Respondents- Office of the Commissioner of Central Tax (Appeals-II). Traffic Transit Management Centre, BMTC Building, 4 th Floor, Old Airport Road, Bangalore-560071.	1,949,371/-	20.03.2017
3.	ST/20093 & ST/20094/20 18 SM	Name of Appellant- Triumph India Software Services Pvt. Ltd. Address of Appellant- No.375, 1 st Cross, Judges Colony, R.T. Nagar, Bangalore-560032.	The Commissioner of Central Tax, North Commissionerate, No.59, HMT Bhavan, Ground Floor, Bellary Road, Bangalore-560032.	3,132,859/-	02.02.2018

3. Heard Mr. Venkata Subbarao Kalva, the Liquidator, **through Video Conference**. We have carefully considered the materials placed on record and the extant provisions of the Code and the rules made thereunder.
4. Mr. Venkata Subbarao Kalva, while reiterating the averments made in the Application, as briefly stated supra, has intimated his appointment and manner of submission of their respective claims to the Financial Creditors, Operational Creditors, Employees and Statutory Authorities through letters dated 8th June, 2019. The Liquidator received claims from creditors for Rs.8,89,60,551/-.
5. While deciding I.A No.689/2019 filed by the Liquidator under section 66 of the Code, 2016, we had directed the Liquidator to file an application for early dissolution of the Corporate Debtor as per Regulation 14 of the IBBI (Liquidation) Regulation 2016.



6. In terms of Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016, if it appears to the Liquidator that-
- (1) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and
 - (2) 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.
7. On perusal of Final Report and Compliance Certificate under Form –H filed along with this Application seeking early dissolution as required under section 45(3)b of the IBBI (Liquidation Process) Regulations, 2016, it is seen that all the assets of the Corporate Debtor have been disposed off. The amount realised from the sale of Liquidation estate is Rs.41,61,448/-.
8. On perusal of the Balance Sheet of the Corporate Debtor as at 04.06.2019, it is seen that the Company is having loss of Rs.20,53,233/- and there has been nil revenue from operations with expenses of Rs.21,05,701/- which include employee benefit expense, financial costs, depreciation cost etc. Further, earnings per share have been diluted to (1.12). There is a total deficit of Rs.9,54,30,568/-. The admitted claims amount to 8,89,60,551/- and amount realized after sale of releasable assets of the Corporate Debtor being Rs.41,61,448/- only, it is clear that the realizable assets of the Corporate Debtor are insufficient to cover the cost of the liquidation process.
9. Further, as per the requirement Regulation 45(3)b of the IBBI (Liquidation Process) Regulations, 2016, it is seen that the Liquidator has submitted final report and Compliance Affidavit in Form H along with the application for dissolution of the Corporate Debtor.



10. In view of the above facts and circumstances, we are of the considered view that it would be just and proper for this Adjudicating Authority to exercise its discretionary powers to dissolve the Company.
11. In the result, by exercising the powers conferred on this Adjudicating Authority under Section 54(2) of the Insolvency and Bankruptcy Code, 2016 R/w Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016, both **I.A. No.489 of 2020 & C.P. (IB) No.156/BB/2017** are disposed of with the following directions:

- (1) The Applicant is permitted to assign absolute rights over Unsold Intangible Assets - Intellectual Property available with the Corporate Debtor, immediately after receipt of a copy of this order and complete the remaining liquidation process;
- (2) Subject to above distribution, the Corporate Debtor, namely M/s. Triumph India Software Services Private Limited is hereby dissolved with immediate effect;
- (3) The Registry is directed to forward a copy of this Order to the Registrar of Companies, Karnataka, Bangalore, within a period of two weeks from today;
- (4) The Liquidator is also directed to forward copies of this order to all Authorities connected with the affairs of the Company.
- (5) It is made clear that this order will not absolve personal legal liability of Directors of Corporate, if any.



ASHUTOSH CHANDRA
MEMBER, TECHNICAL

Amar



RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL