

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

C.P. (IB) No.168/BB/2020

U/s 7 of IBC, 2016

R/w. Rule 4 of I&B (AAA) Rules, 2016

Between:

M/s. Corporation Bank

HO: Mangala Devi Temple Road,
Mangalore, Karnataka

Branch at:

No.40-9-76/3, AVR Arcade,
Sai Nagar, Benz Circle, Vijayawada,
Andhra Pradesh – 520 008.

- Petitioner/Financial Creditor

And

M/s. Avvas Infotech Pvt. Ltd.

Regd. Off: No.40,
6th Sector, 12th Main,
Near Bangalore Development
Authority Complex, HSR Layout,
Bangalore – 560 102.

- Respondent/Corporate Debtor

Order Pronounced on: 06th April, 2021

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

Parties/Counsels for Parties Present:

For the Petitioner : Shri V.B.Shankar with Manjunatha B

For the Respondent : Shri Shiva Srinivasan

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P. (IB) No.168/BB/2020 is filed by M/s. Corporation Bank , U/s 7 of the I&B Code, 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 in respect of M/s. Avvas Infotech Private Limited on the ground that it has committed default for a total amount



of Rs.15,30,55,985.88/- (Rupees Fifteen Crore Thirty Lakh Fifty Five Thousand Nine Hundred Eighty Five and Paise Eighty Five only) as on 31.10.2019.

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

(1) M/s. Corporation Bank (herein after referred to as Petitioner/Financial Creditor) having Identification No. AAACC7245B, having its Head Office situate at Mangala Devi Temple Road, Mangalore, Karnataka State and Branches *inter-alia* one at No.40-9-76/3, AVR Arcade, Sai Nagar, Benz Circle, Vijayawada 520008.

(2) M/s. Avvas Infotech Pvt Ltd (herein after referred to as Respondent/Corporate Debtor) was incorporated on 27.04.2007 having CIN: U32109KA2007PTC042635 and having its registered Office situated at No.40, 6th Sector, 12th Main, Near Bangalore Development Authority Complex, HSR Layout, Bangalore -560102. Its Authorised Share Capital is Rs.5,00,00,000/- divided into 50,00,000 Preference Shares of Rs.10/- each and Paid-up Share Capital is Rs.1,40,23,000/- divided into 14,02,300 Equity Shares of Rs.10/- each.

(3) The Corporate Debtor availed cash credit loan of a sum of Rs.5,00,00,000/- on 05.10.2012 in loan account NO.CC/01/120002 renumbered as loan account No.56010100096097 from the Financial Creditor, agreeing to maintain a running account repayable on demand along with interest at the rate of 13.50% per annum compounded monthly. The Corporate Debtor enhanced the said cash credit loan to Rs.7,50,00,000/- on 20.03.2014, agreeing to repay the same on demand along with interest at the rate of 15.35% per annum compounded monthly. It further revised the cash credit loan and availed further credit facilities. It revised the cash credit loan to a sum of Rs.2,79,00,000/- on 14.02.2015, agreeing to repay the same on demand along with interest at the rate of 15.35% per annum compounded monthly.



- (4) The Corporate Debtor availed working capital loan of a sum of Rs.9,99,00,000/- on 14.02.2015 in loan Account No. WCTL/01/150001 renumbered as loan Account No. 560716000002032 from the Financial Creditor, agreeing to repay the same in 25 structured quarterly instalments along with interest at the rate of 16.35% per annum compounded monthly. It also availed funded interest term loan of a sum of Rs.1,20,00,000/- on 14.02.2015 in Loan Account No. FITLN/01/150001 renumbered as loan Account No.560726000000927 from the Financial Creditor, agreeing to repay the same in 25 structured quarterly instalments along with interest at the rate of 16.35% per annum compounded monthly.
- (5) M/s. Agrigold Farm Estates India Pvt Ltd., Sri Avva Venkata Subramanyeswara Sarma, Sri Avva Venkata Sivaram and Sri Avva Venkata Seshu Narayana Rao, have stood as the guarantors and the aforesaid loans are secured by mortgage of immovable property mortgaged by M/s. Agrigold Farm Estates India Pvt Ltd. and hypothecation of movable property by the Corporate Debtor.
- (6) The Corporate Debtor had also availed working capital loan from the State Bank of India under consortium agreement along with the Financial Creditor to the tune of a sum of Rs.18.50 crores.
- (7) The Corporate Debtor after availing the aforesaid loans, failed to operate the loan accounts satisfactorily and the loan accounts have become a non-performing asset on 31.12.2017 and accordingly the Financial Creditor issued notice dated 04.01.2018 under Section 13(2) r/w Section 13(3) of the SARFAESI Act to the Corporate Debtor and the guarantors calling upon them to pay the entire outstanding loan amount of Rs.12,22,34,309.28/- excluding PRTBL loan account. In spite of receipt of the said demand notice, the Corporate Debtor and the guarantors failed to comply with the terms of the said demand notice. Therefore, the Financial Creditor has taken over the possession of the mortgaged properties under possession



notice dated 03.10.2018. The Financial Creditor has also filed an Application before the Hon'ble Debts Recovery Tribunal at Vijayawada, in OS No.193/2018 against the Corporate Debtor and the same is pending adjudication. However, it has failed to pay the outstanding loan amounts in the aforesaid loan accounts amounting to Rs.15,30,55,985.88/- as on 31.10.2019, and thus filed the instant Application/Petition.

3. The Respondent has filed its objections dated 01.04.2021 by inter alia contending as under:

- (1) The loan for sum of Rs.5,00,00,000/- was enhanced to Rs.7,50,00,000/- on 20.03.2014 and the same was further revised to Rs.2,79,00,000/- on 14.02.2015 at the interest of 15.35% per annum compounded annually. On 14.02.2015, the Applicant provided a working capital loan amounting to Rs.9,99,00,000/- with interest at the rate of 16.35% per annum compounded annually. The Petitioner herein has failed to disclose the actual fact matrix before this Hon'ble Tribunal.
- (2) The Petitioner have filed various Applications for attachment of properties before DRT, which have been dismissed as the Corporate Debtor is an on-going concern and payments to the Respondents cannot be restricted. The Financial Creditor has not provided sufficient cause to initiate CIRP against the Respondent. The actions of Petitioner is to arm-twist the Respondent Company and forum shopping.
- (3) The Petitioner has failed in disclosing the entire fact matrix before this Hon'ble Tribunal. The loan amount has been secured by way of mortgage and the said property is valued at 25 crores, amounting to nearly double the amount claimed. Further, the Applicant has also abused the Respondent position by using litigation strategies in stopping payments and functioning of the Respondent.



- (4) The Respondent Company is functioning with the intention of serving the society and providing employment to the youth from all over the nation, working for the benefit of the nation and its economy and have paid salaries, remuneration to their employees amounting to Rs.2,02,31,11,546 over the past thirteen years. The Respondent Company has also helped about 3.5 crore citizens in obtaining Bio-metric enrolments for Aadhar cards in the states of AP, Telangana, Karnataka, Rajasthan, U.P, M.P, Gujarat, Bihar, Chattisgarh and Meghalaya. The Corporate Debtor further states that their company has a clean track record in honoring loans and interest , having cleared loans and interests amounting to 33.17 crores to banks.
- (5) The Respondent have also contributed good revenue to the state in statutory taxes amounting to Rs.22,16,68,149 over the past ten years. The total amount of output from the Company amounts to a staggering 257.75 crores over the last 10 years towards the contribution of the society and nation at large. Further, submits that they are also suffering from late payment of dues from various government entities and the same has caused temporary hardship in generating revenue. Despite the same, the Respondent have paid an amount of Rs.33 crores towards clearing loans and debts to financial institutions. Despite the Applicant have control over the mortgaged property, the Debtor had offered a OTS scheme which was rejected despite the same being bonafide in nature.
4. Heard Shri V.B.Shankar with Manjunatha B, learned Counsel for the Petitioner, and Shri Shiva Srinivasan, learned Counsel for the Respondent. We have carefully perused the pleadings of both the Parties, extant provisions of the Code, the Rules made thereunder and the Law on the issue.
5. Both the Learned counsels, have once again reiterated their respective arguments as mentioned in their pleadings as briefly stated supra.



6. The case was filed before the Registry of this AA, as early as on 05.02.2000, and it was listed on various dates to serve notice on the Respondent, to give opportunity to it to explore the possibilities of settling the issue etc. After giving several opportunities to the Respondent, ultimately filed its Reply only on 31st March, 2021.
7. The Respondent has not denied the debt and default in question but tried to explain reasons for the same. It is also not known what are other debts it owes to other claimants to know its financial status. Though various proceedings stated to have been initiated against the Respondent for recovery of its debts, the fact remains that it has not paid anything to the Petitioner, though it claimed that it has resources to pay its dues. It is settled principal of law that there is no bar to initiate CIRP against the Respondent as long as it continues remain under debt and default, and proceedings under the Code will have overriding effect over other proceedings initiated before other judicial forums. Therefore, the contention of the Respondent that due to proceedings pending before DRT, the Petitioner cannot initiate the instant Proceedings are not tenable. The Respondent has not come forward to settle the claim even though more than one year has lapsed after filing the instant Petition. As long as debt and default are not settled, the Respondent is estopped from raising un-tenable grounds as raised in their Reply, as briefly stated supra.
8. The above facts clearly established that Debt and Default in question are admittedly not in dispute. The instant Petition is filed strictly in accordance with the extant provisions of the Code, and also suggested a qualified Resolution Professional namely Shri Balady Shekar Shetty, with Registration No. IBBI/IPA-002/IP-N00213/2017-18/10665, who has filed his written Consent in Form-2 on 25.07.2019 by inter alia declaring that no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency; he is currently serving as an Resolution Professional in one (01) CIRP process and as



Authorised Representative in One (01) Case. Therefore he is provisionally eligible to be appointed as IRP. Hence, the Instant Company Petition is a fit case to admit by initiating CIRP against the Corporate Debtor by appointing IRP, and declaring moratorium etc.

9. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, under Section 7(5)(a) of the Code, and other extant provisions of the IBC, 2016, we hereby admitted **C.P. (IB) No.168/BB/2020** by initiating Corporate Insolvency Resolution Process (CIRP) in respect **M/s. Avvas Infotech Pvt. Ltd.**, the Respondent/Corporate Debtor, with the following consequential directions:

- 1) Shri Balady Shekar Shetty, with Registration No. IBBI/IPA-002/IP-N00213/2017-18/10665, who is qualified Insolvency Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor namely M/s. Avvas Infotech Pvt. Ltd. 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, 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 co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
 - 5) The Registry is directed to forward a copy of this order immediately to both the Parties and IRP.
 - 6) Post the case for report of IRP on 6th May, 2021.

Sd/-

ASHUTOSH CHANDRA
MEMBER TECHNICAL



Sd/-

RAJESWARA RAO VITTANALA
'MEMBER, JUDICIAL

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