



Sl.No.1

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH**

**(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)**

**: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.09.2024 AT 01:00 P.M.**

TC/CP. Nos.	IA No & IBC Stage	Present stage of the case	Section/Rule	Name of Parties
CP(IB)/48/9/AMR/2022	Pending Admission	For Pronouncement	9 of IBC	Microcare Computers Private Limited Vs. Verticross India Private Limited

**ORDER**

**Present:** Ms. Sarvani Desiraju, Ld. Counsel for the CD

Orders pronounced. CP(IB)/48/9/AMR/2022 is Admitted and recorded vide separate orders.

**SANJAY PURI  
MEMBER (TECHNICAL)**

**RAJEEV BHARDWAJ  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT MANGALAGIRI**

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**CP (IB)/48/9/AMR/2022**

[Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

**And**

In the matter of

**M/s. VERTICROSS INDIA PRIVATE LIMITED**

**BETWEEN:**

**M/s. MICROCARE COMPUTERS PRIVATE LIMITED**

(CIN: U72200TG1989PTC009795)

Represented through its Managing Director

Mr. Paladagu Kamaiah Chowdary

Regd. Office at: 105, Ratna Complex,

Behind Image Hospitals, Ameerpet,

Hyderabad - 500073.

**...Applicant/Operational Creditor**

**AND**

**M/s. VERTICROSS INDIA PRIVATE LIMITED**

(CIN: U72900AP2016PTC103699)

Regd. Office at: D. No:3-1-229/13, Midhila Nagar,

Opp: Ramaiah Baddi Shop, Vidyadharapura, Vijayawada,

Andhra Pradesh, India- 520012.

And

Also Corporate Office at: 201, Babukhan Millenium Center,

6-3-1099/1100, Raj Bhavan Road, Somajiguda,

Hyderabad, TG -500082

**...Respondent/Corporate Debtor**

**Date of Order: 06.09.2024**

**CORAM:**

**SHRI RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)**

**SHRI SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

**Parties/Counsels Appearance:**

**For the Operational Creditor:** Mr. Veera Shiva Kumar, Advocate

**For the Corporate Debtor** : Ms. Sarvani Desi Raju &  
Md. Hayatullah Khan, Advocates

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**ORDER**  
**(Per: Bench)**

1. The present application has been filed by Microcare Computers Private Limited, the Operational Creditor (**OC**) under Section 9 of IBC<sup>1</sup> read with Rule 6 of the applicable Rules<sup>2</sup> seeking initiation of CIRP<sup>3</sup> against M/s. Verticross India Private Limited, the Corporate Debtor (**CD**) for default of an operational debt of Rs 2,36,38,157 plus interest<sup>4</sup>. The date of default is stated to be 02.02.2022 in part IV of the application.

**The Application**

2. The CD is stated to have placed a purchase order (**PO**)<sup>5</sup> dated 13.06.2018 to the OC, later amended and split into four separate POs<sup>6</sup> all dated 28.1.2018, for supply of materials to be used in GIS<sup>7</sup> and MDAS<sup>8</sup> projects (**the Project**) executed for the DISCOMS<sup>9</sup> in Telangana and Andhra Pradesh.
3. It is submitted that the OC completed the installation work in time, and was issued with Commissioning Certificate<sup>10</sup> by the CD for having “successfully supplied and commissioned” the projects in “TS & AP Discoms” in respect of the PO dated 13.06.2018. That the project team of the OC was “fully cooperative and extended services towards timely completion of the Project” was specially acknowledged by the CD in

<sup>1</sup> Insolvency and Bankruptcy Code, 2016

<sup>2</sup> Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

<sup>3</sup> Corporate Insolvency Resolution Process

<sup>4</sup> Claimed @ 24% per annum from 01.03.2022 to till final realisation of the total unpaid operational debt

<sup>5</sup> No. VIPL/PO/HYD/PRJ/2018-2019/007 dated 13.06.2018: at Page 50 of the Application

<sup>6</sup> Nos. VIPL/AMD/HYD/PRJ/2018-2019/001A for TSSPDCL Discom, VIPL/AMD/HYD/PRJ/2018-2019/001B for TSNPDCL Discom, VIPL/AMD/HYD/PRJ/2018-2019/001C for APSPDCL and VIPL/AMD/HYD/PRJ/2018-2019/001D for APEPDCL, all dated 28.12.2018: at Pages 54, 69, 78 & 114 of the Application

<sup>7</sup> Geographical Information System


<sup>8</sup> Meter Data Acquisition System

<sup>9</sup> Distribution Companies of Telangana State Southern Power Distribution Company Limited (TSSPDCL) and Andhra Pradesh Electric Power Distribution Company Limited (APSPDCL)

<sup>10</sup> Page 126 of the Application

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the Commissioning Certificate. No disputes were raised by the CD regarding the work or the invoices, it is submitted.

4. It is submitted that the OC had raised multiple tax invoices amounting to Rs 4,05,38,157, regarding the material supplied and work undertaken. However, the CD made payments amounting to Rs 1,69,00,000 on various dates, leaving a balance of Rs 2,36,38,157 unpaid. The OC has also filed the ledger account<sup>11</sup> of the CD, covering the period from 01.12.2017 to 31.03.2022, to demonstrate the outstanding debt owed by the CD.
5. It is asserted that the CD admitted the amount of default as due and payable to the OC in its emails. A copy of the email<sup>12</sup> dated 02.02.2022 from the CD is presented as evidence of this acknowledgment. The date of 02.02.2022 is thus claimed as the date of default in Part IV of the Application
6. According to the OC, despite numerous reminders, the CD failed to pay the outstanding amounts. consequently, a Demand Notice<sup>13</sup> in Form-3 dated 07.03.2022 was sent under Rule 5 (1) (a) of the applicable Rules<sup>14</sup>. In its reply dated 17.03.2022, the CD did not deny the default but instead raised false and baseless allegations for the first time. As the outstanding debt remains unpaid, the present application has been filed.

### **The Counter-Reply**

7. According to the CD, the main contractor in the projects awarded by the DISCOMS was M/s Enzen Global Solutions Private Ltd (**Enzen Global**). The CD was sub-contracted by Enzen Global, and both parties

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<sup>11</sup> Page 127 & 128 of the Application

<sup>12</sup> Page 174 of the Application

<sup>13</sup> Page 15 to 30 of the Petition

<sup>14</sup> *supra*





entered into Collaboration Agreements dated 21.06.2018 for the execution of these projects. These agreements, are stated to be “structured on back-to-back payment terms and therefore payment obligations of Engen” to the CD were “integrally connected with the realization of payments by Engen from its clients”, the DISCOMS.


8. Consequently, while issuing the POs to the OC, the CD contends that it was explicitly stated that payments from the CD to the OC would also be structured on 'back-to-back' payment terms. Therefore, the CD's payment obligation to the OC was “integrally connected to with the realization of payment” by the CD’s receipt of payment from its client, Enzen Global. According to the CD, since the amount claimed by the OC has 'not been recovered' from Enzen Global, it has “not even become due”.
9. The CD has also raised objections regarding the interest claim at 24%, asserting that there was no agreement or discussion between the parties about imposing interest in the event of default by the respondent. Essentially, the CD is challenging the validity of the interest claim on the grounds that it was neither part of the original agreement nor mentioned in the demand notice, arguing that the petitioner’s demand for interest is therefore unjustified.
10. Additionally, the CD contends that there were 'several disputes' between the parties concerning the scope of work, reconciliation of amounts payable, and other related issues.

### **The Rejoinder**

11. In its rejoinder, the applicant OC has sought to refute the CD claim regarding the back-to-back payment arrangement with its 'client,' Enzen Global, and the corresponding agreement with the DISCOMS. The OC presented evidence through RTI responses from the State

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DISCOMs, demonstrating that Enzen Global, in collaboration with the CD, received payments from the DISCOMs for the materials and work supplied by the OC for these projects.

12. It is further highlighted that Enzen Global is the holding company of the CD, and one of the directors of the former holds significant positions within the latter. This connection is cited as evidence that the CD is attempting to defraud the OC by withholding the outstanding payments.
13. Regarding the CD's claim of pre-existing disputes, the applicant OC argues that these claims are merely an attempt to evade legal responsibility and liability. To support this, the OC has referenced a series of emails in which the CD consistently praised the OC for its cooperation and patience despite delayed payments. The OC reiterates that there were no genuine disputes between the parties and that the CD's assertions of ongoing disputes are a mere afterthought, intended to misuse the provisions of the IBC.

### **The Decision**


14. We have heard the learned counsel for both parties and have reviewed the documents submitted. The primary contention of the CD against the claims of the OC is that the principal amount being claimed has not yet become due. This contention is considered in the following paras.

#### **Debt, whether due?**

15. The CD has argued that this is because it has not received payments from its 'client,' Enzen Global, and the Purchase Orders issued to the OC contained a 'back-to-back payment' clause. In essence, the CD asserts that since it has not received payments from Enzen Global, and because the Purchase Orders specified that the OC's payments

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were contingent upon the CD receiving payments from Enzen Global, the debt owed to the OC has not become due.

16. We are not persuaded by the CD's argument. We observe that Mr. Jagdish Nanjappa, who serves as an Associate Director<sup>15</sup> of Corporate Affairs at Enzen Global, is also a Nominee Director on the CD's Board, indicating a close relationship between the two companies. Furthermore, from the RTI responses submitted by the OC in their rejoinder, it is evident that the DISCOMs, for whom the project was executed by Enzen Global in collaboration with the CD—and for which the OC supplied materials and services—have made full payments to Enzen Global for the said project.
17. If the CD's argument is accepted, it would effectively enable the collaborating parties, Enzen Global and the CD, to collude and perpetually withhold payments to the CD, thereby ensuring that the payments to the OC may never become due. Such a scenario would compromise the fairness and integrity of the contractual obligations owed to the OC.
18. The payment terms<sup>16</sup> in the POs referred to by the CD based which the argument for back-to-back payments is made, state that:

" Payments by Verticross to Microcare are structured on back-to-back payment terms and therefore, the payment obligations of Verticross to Microcare are integrally connected with the realization of payment by Verticross from the Client. Accordingly, Verticross shall make back-to-back payments to Microcare as soon as reasonably practicable upon receipt of payment from the client". (emphasis supplied)


While the term 'client' used in this clause has not been explicitly defined, the CD's reference to Engen Global in its 'back-to-back payment' argument is misleading. The correct identification of the

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<sup>15</sup> Page 15 of the Rejoinder

<sup>16</sup> PO dated 13.06.2018 at Page 53 of the Application





term 'client' is made in the collaboration agreement between the CD and Enzen Global. Similar to the agreement between the CD and the OC, clause 2.3.1 of the collaboration agreement<sup>17</sup> between the CD and Engen Global, provides that:

"2.3.1 Payment by Enzen to Verticross are structured on back-to-back payment terms and therefore, the payment obligations of Enzen to Verticross are integrally connected with the realization of payment by Enzen from the Client. Accordingly, Enzen shall make back-to-back payments to Verticross as soon as reasonably practicable upon receipt of payments from the client". (emphasis supplied)

The term 'client' referred in this clause clearly refers to the DISCOMS, as can be seen from the recital of the agreements<sup>18</sup>, according to which.

" c) Enzen has been selected as the IT Implementing Agency (ITIA) for implementation of GIS and MDAS in 18 Towns covered under IPDS Phase-II in TSSPDCL ("Project") as part of a Tender floated by Southern Power Distribution Company of T.S Limited ("Client" or "TSSPDCL") vide Tender Specification No.CGM/Projects/GIS\_MDAS/02 /2017-18 ("RFP") and has been issued a Letter of Award ("LOA") vide Lr.Ref.No. CGM(P)/GM(IT)/IPDS Phase-II (IT)/D.No.158/17. Dt.21.04.2018 for the same". (emphasis supplied)

Therefore, even if one considers the payment terms of the Purchase Orders, where payments to the OC were contingent upon receipt from the CD's client, it is clear that the client in question was the DISCOMS.

19. As evidenced by the RTI responses, the DISCOMS have already made payments to Enzen Global, the CD's collaborating partner. Consequently, in accordance with the payment terms of the Purchase Orders, the payments to the OC became due as soon as the DISCOMS made their payments. Thus, the operational debt is unquestionably due to the OC from the CD.

### Disputes, whether pre-existing?

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<sup>17</sup> Page 12 of the Counter

<sup>18</sup> Page 11 of the Counter.



20. In its counter-reply, the CD has made the argument of a pre-existing disputes regarding the scope of work and has cited certain email exchanges between the parties as evidence. However, this argument also is without merit. We have reviewed the emails<sup>19</sup> cited by the CD, along with the exchanges<sup>20</sup> referred to by the OC, and found no mention by the CD of any complaints regarding the OC's supplies or work performed. In fact, the Commissioning Certificate issued by the CD clearly states that the OC successfully supplied and commissioned the project in a timely manner. Regarding payments for the outstanding invoices, the only communication we find consists of requests and reminders from the OC to the CD, with the CD either avoiding a response or promising payment at a later date without following through. We have no hesitation in concluding that no dispute existed prior to the issuance of the Section 8 Notice in this case.

#### **Section 8 Demand Notice**

21. Earlier, the CD had derided the section 8 Demand Notice<sup>21</sup> dated 07.03.2022 issued by the OC, as defective. It was claimed, in its reply<sup>22</sup> to the Demand Notice that the invoices representing the 'alleged' unpaid debt were not attached to this Notice in Form-3. Incidentally, it is only in the reply to this Notice that the CD had alleged that the copies of the said invoices were not served upon them. In their counter reply to the application, no such claim has been made.
22. Be that as it may, the copy of the Demand Notice in Form-3 dated 07.03.2022 issued by the OC to the CD clearly shows that, contrary to the CD's claim, complete details of the invoices, which resulted in

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<sup>19</sup> Pages 58 - 60 of the Counter


<sup>20</sup> Email exchange on Pages 129 – 177 of the application, and WhatsApp Messages on pages 16-20 of the Rejoinder.

<sup>21</sup> Pages 15 – 30 of the Application

<sup>22</sup> Page 45 -48 of the Application

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the debt becoming due, were provided, along with copies of these invoices attached to the Notice. Additionally, the Demand Notice enclosed a copy of the ledger extract from the OC's books of accounts, disclosing both the invoiced amounts and the payments made by the CD over time.

23. Furthermore, copies of all invoices issued to the CD related to the projects for which the OC supplied materials and performed work, along with details of payments made by the CD, have been included in the present application. No infirmity can be found in the Demand Notice issued by the OC to the CD under Section 8 of the IBC.

#### **Interest on the outstanding amounts**

24. As regards the contention of the CD regarding no charge on interest on the delayed payments, we concur. The Purchase Orders placed by the CD did not stipulate payment of interest on account of delayed payment against invoices raised. While the invoices mentioned that "Interest will be charged @24% PA if this payment is not made on or before due date", there was no due date specified on the invoice itself. In this regard it is useful to refer to the case of **Pavan Enterprises Vs. Gammon India Ltd.**<sup>23</sup>, wherein the Hon'ble NCLAT held that:

*"If in terms of any agreement, interest is payable to the Operational or Financial Creditor then the debt will include interest, otherwise, the principal amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor."*

Considering that in the present case, there was no explicit provision for charge of interest on unpaid invoices, the same cannot be allowed to be taken into account for computing the outstanding operational debt.

<sup>23</sup> *Pavan Enterprises Vs. Gammon India Ltd. in CA (AT) (Insolvency) No.144 /2018 dated 27.07.2018*

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25. However, since the undisputed Operational Debt of Principal Amount of Rs 2,36,38157 itself is over and above the threshold limit of Rs 1 crore, the Application filed under section 9 of IBC for initiation of CIRP against the Respondent CD deserves to be admitted.

**THE ORDER**

- I. The present company petition (CP (IB)/28/9/AMR/2023) stands **ADMITTED** and the CIRP is hereby initiated against the M/s. **Verticross India Private Limited (CIN: U72900AP2016PTC103699)**.
- II. As a consequence of the application No. (CP (IB)/48/9/AMR/2022) being admitted in terms of Section 9 of the Code, We also declare moratorium in terms of Section 14 of the Code. The necessary consequence of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) shall come into force.
- III. The Applicant has not proposed the name of the Interim Resolution Professional. Therefore, this Adjudicating Authority appoints **Mr. Namburu Naga Venkata Pardha Saradhi<sup>24</sup>**, as an Interim Resolution Professional (IRP) of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by the IBBI. Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order. Accordingly, **Mr. Namburu Naga Venkata Pardha Saradhi**, is appointed as IRP.

<sup>24</sup> Registration number IBBI/IPA-003/ICAI-N-00415/2022-2023/14118, at 22-11-336/3, Brundavanam, Ambatinagar, Mangalagiri, Guntur, AP- 522503; email: nnvpsaradhi@gmail.com

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- IV. We direct the Applicant/OC to deposit a sum of Rs.2,00,000/- with the Interim Resolution Professional to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of the CIRP, Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor.
- V. In pursuance of Section 13(2) of the Insolvency and Bankruptcy Code 2016, we direct the IRP to make a public announcement immediately about the admission of this application under Section 9 of the Code. The expression immediately means within three days from the date of appointment as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- VI. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- VII. In case there is any violation committed by the suspended management or any tainted/illegal transaction by suspended directors or anyone else, the Interim Resolution Professional

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would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- VIII. The IRP or the RP as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
- IX. In terms of the Insolvency and Bankruptcy Code 2016, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP, the Registrar of Companies, Vijayawada, AP and IBBI by Speed Post and by email, at the earliest but not later than seven days from today. Applicant is also directed to provide a copy of the complete paper book to the IRP. The Registrar of Companies, Vijayawada, AP shall update its website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified and the RoC, AP shall send compliance report to the Registrar, NCLT Amaravati Bench.



**SANJAY PURI**  
MEMBER (TECHNICAL)



**RAJEEV BHARDWAJ**  
MEMBER (JUDICIAL)