

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing)

CP (IB) No.110/BB/2021
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

**Thyssenkrupp Automation
Engineering GmbH**
(formerly known as Thyssenkrupp
System Engineering GmbH)
Registered Office at:
Richard-Taylor-Strabe 89, 28777,
Bremen, Germany

... Petitioner/Operational Creditor

Versus

Avasarala Technologies Limited,
Registered Office at:
No. 60, K Choodahalli Village,
Somanahalli gate,
Kanakapura Main Road,
Bengaluru 560 082.

... Respondent/Corporate Debtor

Order delivered on: 4th July, 2023

Coram: Hon'ble Ms. Bidisha Banerjee, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Ms. Shristi Widge
For the Respondent : Ms. Karishma

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 01.07.2021 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules

2016, by M/s ThyssenKrupp System Engineering GmbH (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Avasarala Technologies Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of EUR 385498.35 (Rs. 3,41,16,603/) (Rs. Three Crore Forty-One Lakh Sixteen Thousand Six Hundred and Three)

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
3. The Operational Creditor is a Company incorporated under the Laws of Germany and is an internationally acting affiliate of the ThyssenKrupp Industrial Solutions AG, a system partner for components of the process chains car body and powertrain in automotive industry.
4. The Corporate Debtor is a Company established during the year 1985 which deals in the field of high technology engineering. The company also deals with Nuclear Power, Factory automation, Aerospace & Defense, Space Products, Space Products, Medical equipments and R&D Institutions.
5. It is submitted that the respondent approached Petitioner in the year 2011-12, for purchase of engineering services and hardware items and entered into a business relationship, wherein the Petitioner would supply both goods and services to the Corporate Debtor based on the requisition and purchase orders issued by the Respondent.
6. Under the agreement the respondent was under an obligation to pay the due amounts within 30 days of delivery of the hardware items or the engineering services' work results. The purchase orders issued by the respondent and the invoices raised by the petitioner after delivering the goods and services are attached along with the Petition.

7. However, over a period of time payments due from the respondent were not forthcoming, despite regular delivery of goods and issuance of invoices by the Operational Creditor. Further, the petitioner sent the statement of all pending invoices and the same was confirmed by the respondent however, payments were not made for the full discharge of the outstanding amount despite acknowledgment of the outstanding debt.
8. The Petitioner in view thereof, issued demand notice dated 27.02.2017 under Section 8 of the Insolvency and Bankruptcy Code, 2016. However, despite issuance of demand notice the respondent failed to make payment of the pending invoices.
9. It is submitted that the Petitioner originally filed petition under section 9 of the IBC, 2016 before this Tribunal, which was numbered as CP (IB) No. 61/BB/2017, seeking initiation of insolvency resolution process against the Corporate Debtor.
10. It is submitted that the Corporate Debtor vide memo dated 08.11.2017 admitted the debt owed to the Petitioner and promised to repay the debt. The respondent also made partial payments between 16.11.2017 to 22.11.2019. By letter dated 11.12.2019 the respondent sought a 20% rebate of the total payable sum and agreed that the balance payable will be cleared before the month of March 2020 in stages.
11. The petitioner responded to the letter dated 11.12.2019 by its notice dated 18.12.2019, extending a proposal for payment of the debt in two tranches i.e first tranche of payment by 31.01.2020 and second tranche of payment by 29.02.2020. The said notice was a proposal for settlement of the debts owed to the petitioner by the respondent. This Tribunal vide order dated 19.12.2019 took on record this proposal dated 18.12.2019, directed the respondent to consider the proposal. Thus the CP (IB) No. 61/BB/2017 was disposed of granting liberty to the petitioner to file fresh petition if aggrieved.
12. However, the respondent did not respond to the settlement proposal dated 18.12.2019 issued by the petitioner. In view thereof, the

petitioner issued demand notices dated 10.12.2020 to the respondent. The respondent did not make any payment pursuant to the demand notices and as on date a sum of EUR 385498.35 is due and payable to the Petitioner.

13. The Learned Counsel for the Corporate Debtor filed its written submission dated 25.05.2022 vide diary No. 2236 submitting that due to Covid -19 situation the business of the company has been affected and requested this tribunal to grant some time to repay the amount due to the Operational Creditor.
14. The Learned Counsel for the Petitioner filed its rejoinder dated 16.09.2022 vide diary No. 3942 and the same is taken on record.
15. Heard both the Counsel and perused the records available.
16. The Petitioner and the respondent entered into business relationship for purchase of engineering services and hardware items. However, the corporate debtor failed to make payment of the invoices raised by the petitioner. The Petition filed vide CP (IB)No. 61 of 2017 was disposed of vide order dated 19.12.2019 directing the respondent to consider the proposal letter dated 18.12.2019 put forth by the petitioner. However, the respondent failed to consider the proposal letter and did not repay the outstanding dues. Hence this petition was filed again on 01.07.2021 for an outstanding default amount of EUR 385498.35/- (Rs. 3,41,16,603.98/-).
17. It is stated in the written submission dated 25.05.2022 filed by the respondent that the business of the corporate debtor has been drastically affected by Covid- 19 and therefore it was unable to comply with the direction of this Tribunal in the order dated 19.12.2019. And further requested more time to repay the debt due to the Petitioner. Therefore, it is noticed that the Corporate Debtor has not denied that there was a Debt and a default. In fact, in the first round that they had agreed to pay the debt if time was allowed upto March 2020; and a 20% discount was given. Thus there was a clear cut admission that their was a debt outstanding.

18. The amount in default is EUR 385498.35 (Rs. 3,41,16,603.98/-) which is above the threshold limit prescribed. The date of default occurred on 26.04.2018. This tribunal vide, order dated 19.12.2019 had directed the petitioner to file fresh petition if aggrieved and this fresh company petition was filed on 01.07.2021 which is well within the limitation. Demand notice dated 10.12.2020 is duly served on the corporate debtor.
19. Accordingly this adjudicating authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Corporate Debtor, M/s Avasarala Technologies Limited. Therefore, the instant Company Petition bearing CP (IB) No. 110/BB/2021 is **admitted** and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in
 - b. any court of law, tribunal, arbitration panel or other authority;
 - c. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - d. 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - e. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.
 - f. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not

be terminated or suspended or interrupted during the moratorium period;

- g. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- h. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

- 20. This bench appoints Mr. Ravi Sankar Devarakonda Registration No. IBBI/IPA-001/IP-P00095/2016-17/10195 having registered address: d-602, Prestige St. Johnswood Apartments, No.80, Tavarakere Main Road, Bengaluru- 560029, e-mail ravicacsma@icai.org as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC. The IRP shall file his written consent within one week from today.
- 21. The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
- 22. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the

Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

23. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(BIDISHA BANERJEE)
MEMBER (JUDICIAL)**