

IN THE HIGH COURT OF KARNATAKA, BENGALURU
WRIT PETITION NO.16691/2023 (GM-RES)
(NOTICE UNDER RULE 13 (a) PROVISIO)

PETITIONER

AVASARALA TECHNOLOGIES,
REGD. OFFICE AT NO.60, K CHOODAHALLI VILLAGE,
SOMANAHALLI GATE, KANAKAPURA MAIN ROAD,
BANGALORE - 560 082.

(BY SMT: DR.VANDANA P L & YUKTHA.N)
VS

RESPONDENTS

1. THE REGISTRAR,
NATIONAL COMPANY LAW TRIBUNAL
BANGALORE BENCH, RAHEJA TOWERS, 12TH FLOOR,
M G ROAD, BANGALORE - 560 001.
2. THYSSENKRUPP AUTOMATION ENGINEERING GMBH,
(FORMERLY KNOWN AS THYSSENKRUPP SYSTEM
ENGINEERING GMBH) REGD. OFFICE AT RICHARD-TAYLOR-
STARBE 89, 28777, BERMEN, GERMANY.
3. MR RAVI SANKAR DEVARAKONDA,
INTERIM RESOLUTION PROFESSIONAL IN CP(IB) NO.110/BB/2022-NCLT-
BANGALORE, IBBI/IPA-001/IP-P00095/2016-17/10195D-602,
PRESTIGE ST. JOHNSWOOD APARTMENT NO.80,
TAVAREKERE MAIN ROAD, BANGALORE - 560 029.
Email ravicacma@icai.org.

(SRI. MANU P KULKARNI, ADV. FOR C/R2)

Whereas, a Writ Petition filed by the above named petitioner under Articles 226 and 227 of the Constitution of India, 1950 Rule 2(3) & 2 (3) (a) of W.P Rules 1977, as in the copy annexed hereunto, has been registered by this Court.

Notice is hereby given to you to appear in this Court in person or through an Advocate duly instructed or through some one authorised by law to act for you in this case, at 10.30 A.M. in the forenoon on 30.08.2023, to show cause why rule nisi should not be issued.

If you fail so to appear on the said date or any subsequent date to which the matter may be posted as directed by the Court, without any further notice, the petition will be dealt with, heard and decided on the merits in your absence.

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-: 2 :-

Pending issue of Rule nisi in the aforesaid Writ Petition it is hereby ordered by this Court on

MONDAY THE 14TH DAY OF AUGUST 2023

BY HON'BLE MR. JUSTICE G.NARENDAR

AND

BY HON'BLE MR. JUSTICE VIJAYAKUMAR.A.PATIL

as follows :-

(VIDEO CONFERENCING / PHYSICAL HEARING)

ORDER

XEROX COPY OF THE ENTIRE ORDER DATED 14.08.2023 IS ENCLOSED HEREWITH SEPARATELY.

Note:- Further proceedings in CP(IB) No.110/BB/2021 on the file of the National Company Law Tribunal, Bengaluru Bench.


ASSISTANT REGISTRAR



Copy to: The National Company Law Tribunal, Bengaluru Bench.
For ref. in CP(IB) No.110/BB/2021.

MB - 220823 - 6.



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
[AVASARALA TECHNOLOGIES VS. THE REGISTRAR AND
OTHERS]

GNJ & VAPJ:

14.08.2023

(VIDEO CONFERENCING / PHYSICAL HEARING)

ORDER

Heard the learned senior counsel Sri M.S. Shyamsundar for the petitioner and the learned counsel for the respondents.

2. He places reliance on Section 10A of the Insolvency and Bankruptcy Code, 2016 (for short 'IBC') which reads as under:-

"10A. Suspension of Initiation of corporate insolvency resolution process.- Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:



Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation.- For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

3. The learned senior counsel would take the Court through the notice dated 19.11.2020 and would submit that in the light of the provisions of Section 10A of the IBC, no proceedings, as noted supra, could have been admitted.

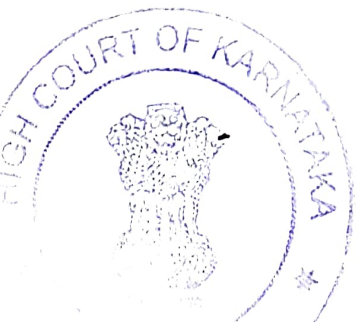
4. Per contra, the learned counsel for the respondents would attempt to distinguish the same and would contend that in the light of the law laid down in ***Innoventive Industries Limited vs. ICICI Bank and Another***¹ case the writ petition is maintainable.

¹ (2018) 1 SCC 407

5. Having perused the judgment of the Hon'ble Apex Court in the case of **Innoventive Industries Limited (supra)**, we find that there is no reference to provisions of Section 10A of the IBC.

6. On a reading of Section 10A of the IBC, prima-facie, we find that the same appears to be a transitional provision to address the aftermath of the pandemic and the same being a beneficial provision, prima-facie we find force in the submission of the learned counsel for the petitioner.

7. Learned counsel for the respondents has placed reliance on the phrase "for any default arising on or before 25th March, 2020" to contend that the default could have arisen on or after 25.03.2020 prima-facie, the demand notice is dated 19.11.2020. Be that as it may, in our opinion, the same requires consideration as the law prima-facie appears to state otherwise.



8. Hence, in our prima-facie opinion, the proceedings before the NCLT are not maintainable and if this Court fails to interfere with the same, it would prima-facie amount to permitting the perpetuation of an illegality.

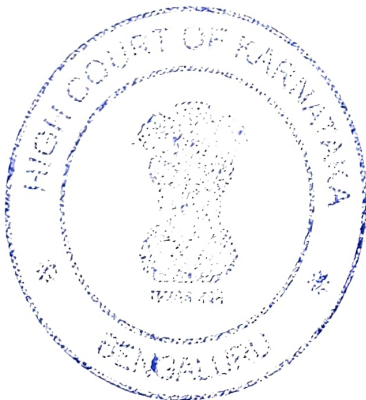
9. Hence, there shall be a stay of further proceedings.

10. Statement of objections if any, in two weeks.

Re-list on 30.08.2023.

8d/-
JUDGE

8d/-
JUDGE



Copy

[Signature]
Assistant Registrar
High Court of Karnataka
Bengaluru - 560 001

[Signature] *[Signature]*

The date on which the application was made... 17/8/23

b) The date on which charges and addl. charges, if any, are paid for.....

c) The date on which the charges and addl. charges, if any, are deposits.....

d) The date on which the copy is ready 23/8/23

e) The date of notifying that the copy is ready for delivery 23/8/23

f) The date on which copy is delivered to the application

TRUE COPY

[Signature]
23/8/23

Section Officer
High Court of Karnataka
Bengaluru - 560 001