

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

C.P. No. 470/BB/2018  
U/s 441 R/w Section 96 of the Companies Act, 2013

**In the matter of**

- 1) Avasarala Technologies Limited,**  
No. 47, 36<sup>th</sup> Main, BTM I Stage,  
Dollar Scheme,  
Bengaluru-560068.
- 2) Mr. Thavuthkhanpet Thanigai Mani,**  
Managing Director,  
No. 102, 4<sup>th</sup> 'A' Cross,  
BTM 2<sup>nd</sup> Stage, B.G Sanskruthi Pearl,  
Bengaluru-560076.

Applicants

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

**Date of order 31<sup>st</sup> August 2018**

For the Petitioner (s) Mr. G.S Shashidhara, PCS

Heard on: 13/08/2018.

**O R D E R**

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical)**

1. This Company Petition bearing C.P No. 470/BB/13 is filed by Mr. Thavuthkhanpet Thanigai Mani, Managing Director on behalf of M/s Avasarala Technologies Limited, by inter alia seeking to admit the Application and to compound the offence for non-compliance of the provisions of Section 96 of the Companies Act, 2013 R/w Section 441 of the Companies Act, 2013.
2. Brief facts of the case, which are relevant to the issue in question, are as follows:

- i. The 1<sup>st</sup> Applicant Company was incorporated on 9<sup>th</sup> March 1987, under the Companies Act, 1956 vide Registration No. 8228 under the name and style of M/s Avasarala Automation Private Limited. Subsequently the Company was converted into a Public Limited Company as M/s Avasarala Automation Private Limited, with effect from 26/04/1995. Further the name of the Company was changed to M/s Avasarala Technologies Limited on 27/09/2005, vide CIN No. **U85110KA1987PLC008228**. The Registered office of the 1<sup>st</sup> Applicant Company is situated at No. 47, 36<sup>th</sup> Main, BTM 1<sup>st</sup> Stage, Dollar Scheme, Bengaluru-560068.
- ii. The Authorized Share capital of the Company is Rs 8,00,00,000/- divided into 80,00,000 equity shares of Rs 10/- each and the Issued, Subscribed and Paid-up Share Capital of the Company is Rs 7,39,33,510/- divided into 73,93,351 equity shares of Rs 10/- each.
- iii. The main objects of the 1<sup>st</sup> Applicant Company is to design, fabricate, erect and commission mechanical handling and material handling equipment's with or without automation and special purpose process equipment's and systems and also to manufacture electronic and electrical assemblies, components and system etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the 1<sup>st</sup> Applicant Company.
- iv. It is submitted that, the Applicant Company could not hold the Annual General Meetings for the financial years 2014-15 and 2015-16 within the stipulated period as required under Section 96 read with Section 99 of the Companies Act, 2013 to place before the Board of Directors for approval of the Financial Statements for the year ending 31<sup>st</sup> March 2015 and 31<sup>st</sup> March

2016, within the time allowed due to administrative reasons as the key personnel's of the Company were quit their jobs and left the company, and hence the 1<sup>st</sup> Applicant Company could not complete the Audit of financials in time and unable to convene Annual General Meeting within the stipulated time. However, the 1<sup>st</sup> Applicant Company has held the Annual General Meeting for the financial year 2014-15 on 30/10/2015 and for the financial year 2015-16 on 23/05/2017 with a delay of 30 days and 235 days, respectively.

- v. It is also averred in the Company Petition that, the above offence committed by the Applicants without any malafide intentions and is not of such nature as will prejudice the interests of the members or creditors or others dealing with the Applicant Company. The Applicant Company unequivocally declares that the said default is such as not to affect the public interest in any way, and no harm is caused to the public interest, and hence suo-moto filed the Application for Compounding.

3. Heard Shri G.S Shashidhara, the Practicing Company Secretary for Applicants contended that the default occurred due to unavoidable circumstances and beyond the control of the Applicant Company. The Practicing Company Secretary for Applicant further contend that, the Applicant Company had complied with the requirement of Section 96 of the Companies Act, 2013 and filed true copy of the Notice sent to the shareholders of the Company and minutes for the Annual General Meetings held on 30/10/2015 and 23/05/2017. The Practicing Company Secretary for Applicant further contend that, this is a suo-moto application filed by the Applicant Company represented by its Managing Director, for compounding of violation committed under section 96 of the Companies Act, 2013, admitting violation and prayed for compounding. Thus there was violation of provisions of section 96 of the Companies Act, 2013.

4. The provisions of section 96 of the Companies Act, 2013 reads as follows:-

“Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.”

For violation of provisions of section 96 is punishable under section 99 of the Companies Act, 2013 which reads as follows:-

If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

5. The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/MMM/4412018 dated 16/07/2018 has stated in his report that, the Company has admitted the default and has offered to compound the offence and the Compounding Application may be decided on merits. The Registrar of Companies, Karnataka, Bangalore has confirmed in his Report that the offence have been made good. He


has further stated in his Report that Mr. S. Ramesh, was the Company Secretary of the Company from 01/02/2012 to till date. He is also liable for filing of compounding application, but not filed the Application. The Registrar of Companies, Karnataka, Bangalore may take decision to initiate action in this regard as per provisions of the Companies Act 2013.

6. We have seen the Certified Copy of the extract of Board Reslution dated 9<sup>th</sup> March, 2018 of the 1<sup>st</sup> Applicant Company wherein the Board of Directors resolved for filing compounding Application, Copy of Notice for holding the Annual General Meeting along with Minutes of the Company. After considering the materials on record and after taking into account the submissions made by the Practicing Company Secretary that lenient view may be taken, we hereby levy compounding fee for delay in complying section 96 of the Companies Act, 2013 on the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.96 of Companies Act, 2013				Total Rs.
		2014-15		2015-16		
		For violation	30 days delay	For violation	235 days delay	
1	1 <sup>st</sup> Applicant Company	20,000/-	500 x 30 = 15,000/-	20,000/-	500 x 235 = 1,17,500/-	<b>1,72,500/-</b>
2	2 <sup>nd</sup> Applicant - Managing Director	20,000/-	500 x 30 = 15,000/-	20,000/-	500 x 235 = 1,17,500/-	<b>1,72,500/-</b>

7. The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on **17<sup>th</sup> September 2018** for compliance.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RAJESWARA RAO VITTANALA)  
MEMBER, JUDICIAL