IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

CP(IB) No. 296/2022

[Application u/s. 7 of the Insolvency and Bankruptcy Code, 2016 under rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

In the matter of:

M/s. Catalyst Trusteeship Limited,
GDA House, Plot No.85,
Bhusari Colony (Right), Paud Road,
Pune – 411 038 &
Branch Office at:
Windsor, 6th Floor, Office No.604,
C.S.T. Road, Kalina, Santacruz (East),
Mumbai – 400 098.

.... **Applicant/Financial Creditor**

Vs

M/s. Manjeera Retail Holdings Pvt. Ltd.,
711, Manjeera Trinity Corporate,
JNTU-Hitech City Road, Kukatpa
Hyderabad – 500 072.

.... **Respondent/ Corporate Debtor**

Pronounced on: 18.07.2023

CORAM:

Chief Justice (R.) Ramalingam Sudhakar, Hon'ble President
Shri Charan Singh, Hon'ble Member (Technical)

COUNSELS PRESENT:

For the Applicant : Mr. Sanjay Kishore, Advocate

For the Respondent : Mr. K. Manoj Reddy, Advocate

ORDER
[PER: BENCH]

1. This application is filed by the Applicant M/s. Catalyst Trusteeship Limited, Financial Creditor (FC) against the Respondent M/s.

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Manjeera Retail Holdings Private Limited, Corporate Debtor (CD), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor for the default committed by the Corporate Debtor in discharging the debt that is due to the Financial Creditor.

2. The brief facts of the case as stated in the application, are as follows:

a. The Applicant is a company incorporated under the Companies Act, 1956.

b. It is submitted that the Andhra Pradesh Housing Board (APHB) and M/s. Manjeera Constructions Limited had entered into Development Agreements dated 06.10.2006 & 22.11.2006 for execution of Project on the land owned by APHB at Kukatpally Village and also executed an Amendment Agreements dated 10.10.2008 & 23.12.2008 to the above said Development Agreements. *(The Development Agreements dated 06.10.2006 & 22.11.2006 are attached to the petition with compliance memo filed on dt: 08.07.2023).*

c. Subsequently, the Principal Borrower was used as a Special Purpose Vehicle for execution of Projects and a Memorandum of Understanding was also executed between Manjeera Constructions Limited, Andhra Pradesh Housing Board (APHB) and the Corporate Debtor and they amended the Development Agreements dated 06.10.2006 vide an Amendment Agreement dated 10.10.2008 and Development agreement dated 22.11.2006 vide an amendment agreement dated 23.12.2008. *(The Amendment Agreements dated 10.10.2008 & 23.12.2008 to the above*

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said Development agreements are attached to the petition with compliance memo filed on dt: 08.07.2023).

d. In order to refinance the project, the Corporate Debtor approached M/s. Altico Capital India Limited (Altico) for financial assistance and Altico sanctioned a term loan facility of Rs.325,00,00,000/- (Rupees Three Hundred and Twenty-Five Crores) vide Facility Agreement dated 13.08.2018 between Corporate Debtor as Borrower and M/s. Manjeera Constructions Limited as Corporate Guarantor, Mr. G. Yoganand as Personal Guarantor, Vistra as Facility Agent and Altico as Original Lender. Altico disbursed an amount of Rs. 274,80,00,000/- (Rupees Two Hundred Seventy-Four Crores and eighty lakhs only) to the Corporate Debtor in two tranches i.e., Rs.100,00,00,000/- (Rupees Hundred Crores only) on 13.08.2018 and Rs.174,80,00,000/- (Rupees One Hundred Seventy-Four Crores and eighty lakhs only) on 14.08.2018.

e. The parties also executed the ancillary documents such as; Unattested deed of Personal Guarantee dated 13.08.2018 *(Annexure No - 17)*, Unattested deed of Corporate Guarantee dated 13.08.2018 *(Annexure No - 18)*, Demand Promissory Note dated 13.08.2018 *(Annexure No - 19)*, Deed of Hypothecation dated 13.08.2018 *(Annexure No - 4)* and Memorandum of deposit of title deeds dated 25.09.2018 *(Annexure No -7)*.

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f. Further, the parties entered into a Master Amendment Agreement dated 01.11.2018. Subsequently, Vistra in its capacity as the Security Trustee/Facility Agent, the borrower, Manjeera Construction Limited, Altico and Fedbank entered into an Assignment Agreement dated 30.07.2019 *(Annexure No- 11)* whereby, Altico assigned a part of the Facility i.e. Rs. 25,00,00,000/- (Rupees Two Five Crores only) to Fedbank.

g. Due to COVID-19 and at request of the Corporate Debtor for relaxation of time for repayment of loan, Altico issued a letter dated 14.09.2020 granting various relaxations to Corporate Debtor including an extension in the term of repayment of loan amount by six months. Accordingly, the payments that were due on 30-06-2021 and 30-06-2022 were shifted by six months and shifted to 31.12.2021 and 31.12.2022.

h. Subsequently, under an Assignment Agreement dated 04.03.2021 which came into effect from 10.03.2021, Altico assigned all its rights to the Applicant/Financial Creditor *"on an as is where is, as is what is and without recourse basis"*, and the Applicant became the full and absolute legal receiver of the said debts owed by the Corporate Debtor.

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i. In terms of the Facility Agreement, the Corporate Debtor repaid the instalment due on 30.06.2020. However, part-payments with respect to the second instalment were defaulted on its due date i.e. on 31.12.2021 and the default is continuing till date. The Applicant issued various default notices to Corporate Debtor dated 06.10.2020, 11.11.2020, 24.12.2020, 04.02.2021, 11.08.2021, 06.04.2022, 06.07.2022 and 05.08.2022. The Corporate Debtor made some part payments from time-to-time, but substantially lagged in making full payments as per the agreed schedule. Vistra issued Facility Acceleration Notice dated 12.09.2022 to Corporate Debtor to make the payment of Rs. 202,44,23,868/- (Rupees Two Hundred and two Crores, Forty-Four Lakhs Thousand, Eight Hundred and Sixty-Eight only).

j. It is submitted that the Corporate Debtor defaulted on the instalment of the principal amount due on in the quarter ending December 2021 and payment of interest for the quarters ending March 2022 & June 2022. The Corporate Debtor admitted its liability towards the Lender on various occasions including by making part payments towards liquidation of the principal amount and interest. The debt as on 31.08.2022 (after compounding under the Facility Agreement and read with the Assignment Agreement) stands at Rs. 202,44,23,868/- (Rupees Two Hundred and two

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Crores, Forty-Four Lakhs, Twenty-Three Thousand, Eight Hundred and Sixty-Eight only).

k. It is submitted that there is a financial debt in existence within the meaning of Section 5(8)(b) of IBC and the Corporate Debtor had availed a term loan facility vide Facility Agreement entered into by and between the Corporate Debtor and Altico which was further assigned to the Financial Creditor by way of the Assignment Agreement.

l. It is submitted that under Section 5(7) of IBC, a person is considered as a Financial Creditor, if a financial debt is owed to it. Further, Section 5(8) of IBC stipulates that the essential ingredient of a financial debt is disbursal against consideration for the time value of money, which is the case in the present Application.

3. The submissions of Ld. Counsel for the Corporate Debtor are as follows:

a. M/s. Manjeera Constructions Ltd. (MCL) is a public listed company engaged in the business of construction, real estate, hospitality, and infrastructure development. To execute the projects, a subsidiary of MCL, M/s. Manjeera Retail Holdings Private Limited (MRHPL), the Corporate Debtor was used as a Special Purpose Vehicle.

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b. Admittedly the Corporate Debtor availed a term loan facility of Rs. 325,00,00,000/- (Rupees Three Hundred and Twenty-Five Crores only)

c. The Corporate Debtor had repaid in advance the principal instalment of Rs. 49,01,80,119/- (Rupees Forty-Nine Crores, one Lakhs, eighty Thousand, One Hundred and nineteen only) during the Financial Year 2018-19 itself which was due in the month of June 2020.

d. On 30.07.2019, Altico assigned a part of the facility, Rs. 25,00,00,000/- (Rupees Twenty-Five Crores only) to Fedbank Financial Services Ltd. (Fedfina) vide Assignment Agreement dated 30.07.2019. As on assignment date, the Corporate Debtor had repaid an amount of Rs. 64,91,80,119/- (Rupees Sixty-Four Crores, Ninety-One Lakhs, eighty Thousand, One Hundred and nineteen only) against the total outstanding principal amount to Altico.

e. During the Financial Year 2019-20, the Corporate Debtor had repaid Rs. 34,62,06,730/- (Rupees Thirty-Four Crores, Sixty-two Lakhs, Six Thousand, Seven Hundred and Thirty only) to Altico and as on March 2020, the outstanding principal repayment was Rs. 166,16,13,151/- (Rupees One Hundred, Sixteen Lakhs, Thirteen Thousand, One Hundred and Fifty One only).

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f. The Corporate Debtor vide its letter dated 14.02.2020 informed to Altico regarding the pendency of issues with Telangana Housing Board, but no relaxation was granted and the Corporate Debtor was constrained to service additional interest *(The letter dated 14.02.2020 is attached to the Reply and marked as Annexure-A).*

g. The Corporate Debtor vide its email dated 30.03.2020 further requested Altico to explore granting the reliefs under the RBI circular. The Altico vide its email granted two options with respect to availing the moratorium i.e. unpaid interest to be repaid within 3 months or to be capitalized and repaid on pro-rata basis with principal repayments, whenever due. The Corporate Debtor chose the former and the balance interest due for quarter ending March 2020 was repaid in May 2020. Later, vide letter dated 14.09.2020, the Altico granted the relaxations as per RBI Circular dated 23.05.2020 and accordingly the repayment schedule was amended and the last date for repayment as 31.12.2022. The Corporate Debtor remitted the interest for quarter ending September, 2020 with some delay by December 2020 and March 2021 *(is attached to the Reply and marked as Annexure-B)*

h. Due to pandemic, the Corporate Debtor vide its letter dated 30.09.2022 once again highlighted the impact of the lockdown on the business and rentals of Manjeera Mall and requested Altico to

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consider waiving the step-up interest rate of 2% and reduce the applicable interest on the loan facility from 14.25% to 12%, but Altico did not consider the requests made by Corporate Debtor *(Annexure C to H of the Reply).*

i. It is stated that with respect to leasing Manjeera Mall to one entity, the Corporate Debtor was in negotiations with LULU International shopping malls Private Limited (LULU) and Altico was aware of the same.

j. The Corporate Debtor again made representations to Altico for grant of additional time so that the lease agreement with LULU becomes operational, and the Corporate Debtor could repay the loan. However, Altico did not agree to the same.

k. The Corporate Debtor reiterates Section 65 & Section 7(5)(a) of the Code and relies on the order of the *Hon'ble NCLAT in Anita Jindal Vs. Jindal Buildtech Pvt. Ltd. & Ors. (Order dated August 4, 2022 in Company Appeal (AT No.512 of 2021) and on the judgement of the Hon'ble Supreme Court in Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd. (2022) 8 SCC 352 vide Order dated July 12, 2022* and submits that the Corporate Debtor is a solvent entity and CIRP would not be the appropriate resolution of the Corporate Debtor.

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ANALYSIS AND FINDING:

4. After hearing counsels from both sides and on perusal of written submissions, case laws and other records submitted to us, the point that arises for our consideration is:

Whether there exists a debt of a sum over Rupees One Crore due and payable by the Corporate Debtor? If so, whether the Corporate Debtor has defaulted in repayment of the same?

5. Financial Creditor has produced all the documents/ facility agreements proving that corporate debtor was sanctioned a term loan facility of Rs 325.00 crores by Altico, out of which Rs 274.80 crores was disbursed to the corporate debtor. This debt was assigned to the Applicant by Altico by way of the Assignment Agreement. As per NeSL certificate produced to us the date of default is 31.12.2021 as CD has defaulted on the instalment of principal amount due on the quarter ending December 2021. NeSL certificate also shows that Corporate Debtor has not disputed existence of debt but it has raised dispute about outstanding amount and also about default. According to NeSL certificate, Corporate Debtor has reported that while Rs. 45,12,76,552 became due and payable on 31.12.2021, it was not a default by MRHPL and it intends to honour its repayment obligations but owing to effect of pandemic on its revenue stream it is making payment with certain delays. In its reply and written statement, Corporate Debtor has not denied the existence of debt or default but it has submitted various reasons, more particularly the impact of pandemic, for the default.

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There may be number of reasons for non-payment of due amount. However, that cannot change the status of the default. The object of the Code has to be given effect to, if the ingredients are satisfied. In view of the above, our answer to the issue framed that there exists a debt of a sum over Rupees One Crore due and payable by the Corporate Debtor and Corporate Debtor has defaulted in repayment of the same is answered in the affirmative.

6. Corporate Debtor has placed its reliance on the order of the *Hon'ble NCLAT in Anita Jindal Vs. Jindal Buildtech Pvt. Ltd. & Ors. (Order dated August 4, 2022 in Company Appeal (AT No.512 of 2021) wherein the following has been held with respect to Section 65:*

> *"Though the Section 65(1) does not expressly mention Debt Recovery Action under 'for any purpose other than resolution of insolvency...', keeping in view the factual occurrence of the events of this particular matter, we hold that the intent may not be a malafide intent, but is nevertheless a fundamental attempt to obtain an edge/ advantage / an upper hand in recovering their dues. At this juncture we place reliance on the judgment of The Hon'ble Madras High Court in S.T. Sahib Vs. Hasan Ghani Sahib, 1956 SCC Online Mad 344, wherein the Hon'ble High Court has examined the word malice and observed that malice would mean inappropriate and wrongful motive to use the law in a manner other than its 'legally appointed and appropriate purpose'. The Hon'ble Madras High Court has further observed that a wrongful motive need not be a mala*

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fide intent, it could simply be an attempt to attain an advantage.

This Tribunal is of the earnest view that seeking to initiate CIRP, in the factual matrix of the attendant case, is only with an intention for 'Recovery' of their dues and opposes the very spirit, point and purpose of the Code. We hold that A Recovery Proceeding of this nature does fall within the scope and ambit of the words for any purpose other than Resolution, as defined under Section 65 (1) of the Code."

Corporate debtor holds that in this case also the Applicant's intention is purely for recovery and not for resolution of Corporate Debtor, hence this judgement will be applicable. But we find that facts of the instant case are not applicable to the present application because in the case under reference, there was a dispute with respect to the Financial Debt owed by the Debtor to the Creditor and also the status of the Creditor as a Financial Creditor was in question. But, in the present application, no such issue is visible. The inability to pay the debts due is apparent on the face of record. The NeSL Certificate is filed proving the same. Hence, this judgement cannot be relied upon while deciding on the application in the present case.

7. Further, Corporate Debtor also placed its reliance on *Hon'ble Supreme Court judgement in Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd. (2022) 8 SCC 352 vide Order dated July 12, 2022* on the plea that CD is a going concern and the facility extended to it by Altico, subsequently assigned to the Applicant, is duly secured by valuable assets and CD is actively reviving the revenue streams from Manjeera Mall, MTC and MMC which shall ensure complete repayment provided some time is given.

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In our view, Vidarbha judgement is not applicable in the present case because in that case the Corporate Debtor was having an award passed by the Appellate Tribunal of Electricity for an amount of Rs.1730 Crores which far exceeded the claim of the FC, whereas in this case there is no such material to prove any other source of revenue available in this case except intentions and promises put forth by Corporate Debtor. The ability to pay the debts in default is quiet apparent.

8. Even the intentions and promises of CD are under question as financial creditor has alleged that the amounts received by the CD by leasing secured assets were neither routed through the escrow mechanism nor utilised for fulfilment of its repayment obligation towards Applicant and that too without taking prior approval of the Applicant, the CD has entered into the lease transaction covertly to evade compliance of its contractual obligation. Financial Creditor has filed two IAs nos 416/ 2023 and 424/ 2023 praying for an injunction order for altering/ modifying / changing the security created for securing the facility and sought direction through these IAs to direct CD to deposit the money which CD has received on account of unauthorized transfer of rights in the secured properties. All these facts emphasize the fact that the debt and default has made it inevitable to the applicant Financial Creditor to move this application to safeguard the assets and value of the Corporate Debtor by initiating CIR Process.

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9. Though, Corporate Debtor has also raised some other points like it is presently in negotiations with various lenders to raise the financing for repayment of the entire outstanding dues to the Financial Creditor and it is carrying out refurbishment works in Manjeera Mall, after which the premises can be handed over to LULU International, however, nothing concrete has been put to the Financial Creditor who alone has to take the call. We cannot rely only on submissions and it is not relevant to the Adjudicating Authority.

10. In view of the above facts, we find that the applicant has fulfilled all the stipulations as required under the provisions of the Code, 2016, for the purpose of initiating the Corporate Insolvency Resolution Process. Further, we find due compliance of the requirements in terms of Section 7(3) of the Code, 2016, by the Applicant, and this Adjudicating Authority in terms of its power under Section 7 (4) ascertained the existence of debt and default, as alleged on the part of the Corporate Debtor from the record placed by the Applicant, under sub-section (3) of Section 7 of the Code, 2016. We are fully satisfied that the present Application under sub-section (2) of Section 7 of the Code, 2016, is complete in all aspects and that there are no disciplinary proceedings pending against the proposed resolution professional. In these circumstances, we are inclined to admit the instant Application.

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11. Accordingly, the Application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.

12. The Applicant has proposed the name of Mr. Vamsi Kambhammettu, as the Interim Resolution Professional (hereinafter referred to as the "IRP"). Accordingly, this Adjudicating Authority appoints Mr. Vamsi Kambhammettu, bearing Registration No.: IBBI/IPA-001/IP-P00664/2017-2018/11141, R/o A85, DX4, ROAD NO 11, FILM NAGAR, JUBLIEE HILLS Hyderabad – 500033, E-mail ID: raoandraoca@gmail.com, Ph.: 9866122632, as the Interim Resolution Professional. The AFA filed by the proposed IRP has expired on 14.12.2022, hence he is directed to file renewed Authorization for Assignment to the registry before taking up the assignment.

13. The IRP is directed to take charge of the management of the Corporate Debtor, immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claim in the manner as prescribed.

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14. We direct the Applicant to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) towards the advance fee of the IRP and expenses towards the CIRP, which shall be ratified later by the Committee of Creditors.

15. Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all the following are prohibited:

i. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court or law, tribunal arbitration panel or other authority;*

ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*

iii. *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 (54 of 2002);*

iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

v. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time*

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being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

16. The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangements may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

17. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code, 2106. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the Code, 2016.

18. The Applicant as well as the Registry are directed to send the copy of this Order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016.

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19. The Registry is directed to communicate this Order to the Applicant and the Corporate Debtor.

20. The Registry shall also communicate this Order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.

21. Accordingly, this Petition **CP (IB) NO 296 OF 2022** is **admitted**.

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(RAMALINGAM SUDHAKAR)
PRESIDENT

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(CHARAN SINGH)
MEMBER (TECHNICAL)

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