

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 02.05.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/213/2024 in Company Petition IB/296/2022
NAME OF THE COMPANY	Manjeera Retail Holdings Pvt Ltd
NAME OF THE PETITIONER(S)	Catalyst Trusteeship Limited
NAME OF THE RESPONDENT(S)	Manjeera Retail Holdings Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/213/2024

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

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HYDERABAD BENCH, HELD ON 02.05.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/765/2024, Intervention Petition (IBC)/10/2024, IA (IBC)/773/2024, IA (IBC)(Plan)/08/2024, IA (IBC)/726/2024, IA (IBC)/373/2024 in Company Petition IB/296/2022
NAME OF THE COMPANY	Manjeera Retail Holdings Pvt Ltd
NAME OF THE PETITIONER(S)	Catalyst Trusteeship Limited
NAME OF THE RESPONDENT(S)	Manjeera Retail Holdings Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/765/2024 and Intervention Petition (IBC)/10/2024

Present: Ld. Senior Counsel Mr. Shyam Sundar along with Mr. Y.

Suryanarayana for the Applicant.

Ld. Counsel Mr. VVSN Raju and Ms. Meghana for the Respondent No.1/RP.

Ld. Counsel Mr. Palash Taing for the COC/Respondent No.2.

Matter is adjourned to 08.05.2024.

IA (IBC)/773/2024

Present: Ld. Counsel Mr. Amir Bavani for the Applicant.

Ld. Senior Counsel Mr. S. Ravi along with Mr. VVSN Raju and Ms. Meghana for the Respondent No.1/RP.

Ld. Counsel Mr. Palash Taing for the COC/Respondent No.2.

Arguments heard. Both the Counsels may file written submissions on or before 08.05.2024.

IA (IBC)(Plan)/08/2024

Present: Ld. Counsel Mr. VVSN Raju along with Ms. Meghana for the Applicant/RP.

Ld. Senior Counsel Mr. Shyam Sundar along with Mr.Y. Suryanarayana for the Respondent.

Ld. Counsel Mr. Pradeep Joy for the Respondent No.1

Matter is adjourned to 08.05.2024.

IA (IBC)/726/2024

Present: Ld. Counsel Mr. G. Jagadish for the Applicant.

Ld. Counsel Mr. VVSN Raju along with Ms. Meghana for the Respondent No.1/RP.

Ld. Counsel Mr. Palash Taing for the COC/Respondent No.2.

Matter is adjourned to 08.05.2024.

IA (IBC)/373/2024

Present: Ld. Counsel Mr. Y. Suryanarayana for the Applicant.

Ld. Counsel Mr. VVSN Raju along with Ms. Meghana for the Respondent No.1/RP.

Ld. Counsel Mr. Palash Taing for the COC/Respondent No.2.

Matter is adjourned to 08.05.2024.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II**

**IA No.213 of 2024 in
CP(IB) No.296/7/HDB/2022**

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules*

In the matter of M/s.Manjeera Retail Holdings Limited

Between:

M/s.S2Tech.com India Private Limited,
Regd Office: 2-40/MSL/Polaris/801,
Meenakshi Sky Lounge,
HITEC City, Kondapur,
Hyderabad – 500 084,
Telangana.

....Applicant

A n d

Mr.Birendra Kumar Agarwal,
Resolution Professional of
M/s.Manjeera Retail Holdings Private Limited,
402, Corporate Annexe,
Sonawala Lane, Near Udyog Bhavan,
Goregaon East, Mumbai City,
Maharashtra – 400 063.

....Respondent

Date of Order: 02.05.2024

CORAM :

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Applicant : Mr.Sachin Sharma, Advocate
For the Respondent : Mr.VVSN.Raju, Advocate.

Per : [Rajeev Bhardwaj, Member(Judicial)]

ORDER

1. Challenge in the present Interlocutory Application has been made to the rejection of the claim of the Applicant vide e-mail dated 20.12.2023 by the Resolution Professional (RP) of M/s Manjeera Retail Holdings Private Limited (hereinafter referred as the Corporate Debtor/Respondent).
2. Briefly, the Applicant has put up the case that:
 - 2.1 M/s Manjeera Retail Holdings Private Limited was put under Corporate Insolvency Resolution Process (CIRP) on the basis of the order dated 18.07.2023 under Section 7 of the Insolvency & Bankruptcy Code filed by M/s. Catalyst Trusteeship Limited, Financial Creditor.
 - 2.2 The Respondent stood as Guarantor in Inter Corporate Deposit Agreement (ICD) dated 25.05.2013 for the repayment of the loan advanced by the Applicant to M/s Manjeera Constructions Limited. As on 30.08.2023, M/s Manjeera Construction Limited owes an amount of Rs.11,99,11,678/- to the Applicant. Therefore, the Applicant filed the claim in Form C with the Interim Resolution Professional (IRP) of M/s Manjeera Retail Holdings Private Limited.
 - 2.3 The claim was rejected by the Respondent on the ground that guarantee deed was not invoked and further no board resolution was passed in the Board Meeting, which stand is wrong and illegal.
3. In the Counter, the Respondent has not only challenged the locus standi of the Applicant to file the present Application, but also submitted that the claim filed by the Applicant is frivolous and baseless.
 - 3.1 It is submitted that the terms & conditions of the agreement cannot be delineated. The agreement lacks clarity and incapable of being

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made certain. In this regard, a reference has also been to Section 29 of the Contract Act and judgement of the Hon'ble Supreme Court in the matter of *Industrial Investment Bank of India Limited versus Bishwanath Jhunjunwala* decided on 18.08.2009.

3.2. Further, the Guarantee Deed was never invoked and therefore the Guarantor cannot be made liable solely due to initiation of insolvency proceedings against the borrower.

4. We have heard the Learned Counsels for both the parties and have also gone through the entire records.

5. M/s.Manjeera Retail Holdings Private Limited and M/s.Manjeera Construction Limited are in CIRP vide order dated 18.07.2023. The Applicant being the unsecured financial creditor has filed claim before the Resolution Professional (RP) appointed in M/s Manjeera Constructions Limited and the said claim is at **Annexure 1 of the Counter**. The Applicant in the present Application also claims that the present Corporate Debtor is a Guarantor of M/s.Manjeera Constructions Limited and therefore filed the claim with the RP appointed in the present case, which he rejected vide e-mail dated 20.12.2023 vide **Annexure 5 of the Application** and the extract of the reasons for rejection is given below:

“Since no Guarantee Invocation letter was sent to the Corporate Debtor and BR passed in the Board Meeting of the Corporate Debtor regarding Corporate Guarantee, the claim submitted by you in MRHPL is rejected”.

6. Learned Counsel for the Applicant has relied upon the judgement of the Hon'ble NCLAT in *Export Import Bank of India versus Resolution Professional, JEKPL Private Limited in CA(AT) (Insolvency) No.304 of 2017 dated 14.08.2018* to say that invocation of the guarantee for claiming the amount has no nexus with the filing of the claim and

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accordingly rejection of the claim by the RP for the reason that it is still not matured is wrong and illegal.

7. Per contra, Learned Counsel for the Respondent relied upon the judgement on the Hon'ble NCLAT in ***IDBI Trusteeship Services Limited versus Mr Abhinav Mukherji and others in CA(AT)(Insolvency) No.356 of 2022*** decided on 12.07.2022 and ***M/s.Edelweiss Asset Reconstruction Company Limited versus Orissa Manganese and Minerals Limited and others in Company Appeal (AT) (Insolvency) No.437 of 2019 & IA No.1830 of 2018*** decided on 23.04.2019. In both these cases, it was held that the RP has rightly not accepted the claim in the absence of invocation of the guarantee because the claim has not matured.
8. In the context of the controversy in question, the definition of the claim under Section 3 (6) of IBC is relevant, which says that claim is:
 - (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;
 - (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;
9. Thus, the right of payment whether matured or non-matured falls within the definition of claim and invocation of the guarantee would only give cause of action to file the claim against the PG, but the liability subsists whether the guarantee is invoked or not. As such, liability consists of non-matured right to payment also. However, the Applicant will succeed only when the other requirements to file such claim are also satisfied.

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10. The ICD agreement dated 25.05.2013 (**Annexure 1 of the Application**) is not enforceable in view of Section 179(3)(f) and 186(5) of the Companies Act. The powers to borrow money can only be exercised by the Directors at a duly convened meeting of the board. [Section 179 (3) (d)]. However, the power to borrow money may be delegated by the Board by passing a resolution at a duly convened Board Meeting, to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office. At the same time, Section 180 (1) (c) Section prohibits the Board from borrowing a sum which together with the moneys already borrowed by the company, exceeds the aggregate of its paid-up share capital, free reserves and securities premium, apart from the temporary loans obtained by the company's bankers in the ordinary course of business unless the company has received the prior approval of the shareholders of the company, through a special resolution in general meeting. Section 186(5) of the Companies Act 2013 clearly elucidates that no guarantee shall be given by the company unless the resolution sanctioning it is passed at a meeting of the Board.

12. Despite the respondent taking objection about the legality of the Agreement (**Annexure 1 of the Application**), the Applicant has not placed on record any such authorization by the Board of Directors to enter into agreement of the guarantee. In the absence of such evidence, the Agreement (**Annexure 1 of the Application**) is not legal, thus, it cannot be enforced by the executants to the said document.

13. In view of the aforesaid discussions, **IA No.213 of 2024 in CP No.296/7/HDB/2022 is dismissed.**

SD/-

(Sanjay Puri)
Member(Technical)

SD/-

(Rajeev Bhardwaj)
Member(Judicial)

Vinod