SL. No.3

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 8.11.2024 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	**IA (IBC)/373/2024 in Company Petition IB/296/7/2022**
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)/373/2024

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

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Vamsi

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No.373 of 2024 in
CP(IB) No.296/7/HDB/2022

In the matter of:

M/s. Catalyst Trusteeship Limited, Financial Creditor
vs.
M/s. Manjeera Retail Holdings Private Limited, Corporate Debtor

Between:

Mr. Gajjala Yoganand,
Member of suspended Board of Directors
of M/s Manjeera Retail Holdings Private Ltd.,
R/o. Plot No.18, Aswini Heights,
Road No.70, Jubilee Hills,
Hyderabad – 500 033.

….Applicant

And

1. Mr. Birendra Kumar Agarwal,
   Resolution Professional of
   M/s Manjeera Retail Holdings Private Limited,
   #711, Manjeera Trinity Corporate,
   Beside Manjeera Mall, JNTU-Hitech City Road,
   Kukatpally, Hyderabad – 500 072.

2. Mr. Birendra Kumar Agarwal,
   Resolution Professional of
   M/s Manjeera Constructions Limited,
   #711, Manjeera Trinity Corporate,
   Beside Manjeera Mall, JNTU-Hitech City Road,
   Kukatpally, Hyderabad -500 072.

3. The Committee of Creditors
   for M/s Manjeera Retail Holdings Private Limited,
   Represented by Lead Creditor of
   Catalyst Trusteeship Limited,
   Registered Office at GDA House,
   Plot No. 85, Bhusari Colony (Right),
   Paud Road, Pune 411 038.

4. The Committee of Creditors
for M/s Manjeera Constructions Limited,
Represented by Lead Creditor of
Catalyst Trusteeship Limited,
Registered Office at GDA House,
Plot No. 85, Bhusari Colony (Right),
Paud Road, Pune 411 038.

...Respondents

Date of order : 18.11.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Petitioner	:	Mr. Y. Suryanarayana
For Respondent No.1 & 2	:	Mr. Abhijeet Sinha & Mr. VVSN Raju
For Respondent No.3 & 4	:	Mr. Palash Taing

Per : Sanjay Puri, Member (Technical)

O R D E R

The Application

1. This application has been filed by the suspended director of M/s. Manjeera Retail Holdings Private Limited (**MRHPL**), which, along with its holding company, Manjeera Constructions Limited (**MCL**), is undergoing Corporate Insolvency Resolution Process (**CIRP**). Both Corporate Debtors were admitted into CIRP by this Authority on 18.07.2023, and the Resolution Plans approved by their respective Committees of Creditors (**CoC**) have been submitted by the common Resolution Professional (**RP**).

2. Filed on 12.02.2024, more than 180 days after the CIRP commenced, this application appears to be intended to delay the resolution process in both cases. Nonetheless, the arguments presented in the application are addressed in the following paras, taking into account the counterarguments submitted by the respondents.

3. The stated rationale for this application is based on judicial precedents that set out criteria for consolidating the CIRP of different Corporate Debtors. It is asserted that both MRHPL and MCL meet these criteria, justifying the consolidation request. The cited precedents include the cases of **Videocon[1], Radico Khaitan[2], Oase Asia[3] and Giriraj Enterprises[4].**

4. It is claimed that though MRHPL and MCL "are distinct and independent", MRHPL being a wholly owned subsidiary of MCL, "on a consolidated basis both entities are to be viewed as a single entity" considering the "major investment made, project assigned and support extended" by MCL to MRHPL since its formation as SPV[5].

5. Elucidating on the relationship between MRHPL and MCL[6], it is argued on behalf of the Applicant that both companies have "common assets and liabilities being inextricably intertwined apart from the other criteria laid down in binding precedents such as common directorship, common financial creditors, common resources, interlinkages of finances, common registered office etc"

[1] State Bank of India v. Videocon Industries Limited, 2019 SCC OnLine NCLT 745
[2] Radico Khaitan Ltd. v. BT & FC (P) Ltd., 2021 SCC OnLine NCLAT 551
[3] Oase Asia Pacific (P) Ltd. v. Axis Bank Ltd., 2021 SCC OnLine NCLAT 493
[4] Giriraj Enterprises v. Regen Powertech (P) Ltd., 2023 SCC OnLine NCLAT 2546
[5] MRHPL was incorporated as Special Purpose Vehicle (SPV) to implement a part of the project to be executed by MCL
[6] Table at para 18 of the Application

and therefore “CIRP of both Corporate Debtors be consolidated which will lead to value maximisation and benefit several stakeholders of the Corporate Debtors”.

6. The Applicant further contends that, as the "suspended director and main promoter of both companies" and the “key person behind building the assets” in both MRHPL and MCL, he possesses the legitimate locus to file this application. Additionally, it is argued that the total quantum of the resolution plan proposed by the Applicant for both companies exceeds the combined value of the individual plans submitted by the resolution applicants and approved by the respective CoCs.

The Counters

7. In their respective counterstatements, the RP and the CoCs for both Corporate Debtors, MRHPL and MCL, have opposed the application for CIRP consolidation. They argue that the filing is “nothing but an afterthought” and claim that this application, submitted “at such a late stage by the Applicant/suspended director, is yet another attempt to derail the time-bound CIRP process of the Corporate Debtor[s].”

8. Further, it is contended that the Applicant being a suspended director “is no longer involved in running the affairs of the Corporate Debtors” and has no locus-standi in filing application for consolidation and it is only the CoCs “being the primary stakeholders who [are] entitled to pray for consolidation, if any”. That the CDs are “two separate legal entities” and “independent of its members or people controlling it” is also asserted to buttress their argument against consolidation.

9. It is also pointed out that, both Corporate Debtors received 46 EoIs each, after the initiation of the CIRP, with 4 Prospective Resolution Applicants submitting resolution plans for MCL and 8 for MRHPL. The composition of the CoC for the CIRP in both Corporate Debtors is also emphasized, by pointing out that for MRHPL, the CoC consists of only 2 members, whereas for MCL, there are as many as 7 members in the CoC.

10. The legal precedents cited by the applicant have been sought to be distinguished on facts and the issues involved, or have been cited to support their position against consolidation in the present case.

The Decision

11. After examining the arguments for and against the consolidation of CIRP, and reviewing the case laws cited by both parties, we conclude that this application has not been filed in good faith. Our apprehension, that the application—filed more than six months after the initiation of CIRP and following the receipt of viable resolution plans—is intended solely to delay the resolution process, has not been unfounded.

12. As rightly pointed out by the Respondents, the Applicant, being the suspended director of both companies, has no role in the management or operations of the companies and is not a stakeholder in the CIRP for either of the Corporate Debtors (CDs). Having previously led the CDs to insolvency, resulting in the initiation of CIRP for both entities, he has repeatedly attempted to obstruct their resolution. Since the initiation of CIRP, he has filed

as many as nine (9) interlocutory applications[7] in both cases on one pretext or another, all of which have been dismissed.

13. Under Insolvency and Bankruptcy Code, CIRP is a "*creditor-driven process*," and "*settlements between the corporate debtor and the CoC may be in the best interests of all stakeholders*," as held by the Hon'ble Supreme Court in its landmark ***Ebix Singapore***[8] judgment. Therefore, the CoCs are the primary stakeholders for both CDs. In this case, if the CoCs, exercising their commercial wisdom, do not perceive any benefit in consolidating the CIRPs, their decision should be respected[9] and not substituted by the claims of the suspended director, regardless of how compelling or reasonable they may appear—which, in fact, they are not.

The Case Laws

14. The central argument taken by the applicant to seek consolidation of two CIRPs is based on the criteria[10] of 'common control etc' laid down in this regard in the case of ***Videocon*** (supra). A table has also been provided in the application to demonstrate how the two CDs i.e. MCL and MRHPL together fulfil the same – and therefore qualify for consolidation of their respective CIRPs. However, relying solely on the criteria of 'common control etc' to determine the consolidation of two CIRPs reflects an incomplete understanding of that judgment.

[7] IA No. 1906/2023, IA Nos. 53,726,764,765,1179,1225 of 2024 & IA (Intervention) No.10 of 2024 in CPA(IB) No.296/7/2022 (M/s Manjeera Retail Holdings Private Limited), and IA No. 1849 of 2023 in CP(IB) No.320/7/2022 (M/s Manjeera Constructions Limited)
[8] Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC), (2022) 2 SCC 401 : (2022) 1 SCC (Civ) 586 : 2021 SCC OnLine SC 707 at page 509-510
[9] "**The Committee reiterated that the objective of the Code is to respect the commercial wisdom of the CoC**" – 'Report of the Insolvency Law Committee of March, 2018' as extracted in K. Sashidhar v Indian Overseas Bank and Ors. : (2019) ibclaw.in 08 SC (para 52)
[10] Para 80 of Videocon Judgment

15. The Learned Judge in that case had laid down the criteria of

> *"(1) Common control, (2) Common directors, (3) Common assets, (4) Common liabilities, (5) Inter-dependence, (6) Inter lacing of finance, (7) Pooling of resources, (8) Co-existence for survival, (9) intricate link of subsidiaries 10) inter-twined of accounts, 11) inter-looping of debts, 12) singleness of economics of units, 13) cross shareholding, 14) Inter dependence due to intertwined consolidated accounts, 15) Common pooling of resources, etc." ('***common control etc'***)*

terming these as the

> "*elementary governing factors, which prima-facie activate the process of consolidation*".

He observed thereafter that:

> *"At first glance the existence of these **rudimentary** points are required to be seen to examine whether in a particular case the question of 'consolidation' is worth consideration or not?"* (emphasis supplied)

His examination about "*whether the case in hand can fit into these basic criterion*" was preceded by a conclusion that "*summum bonum*" or the ultimate goal for the process of consolidation along with the jurisdiction of the Authority has to be, that

> *"Consolidation is to be utilized as a mechanism to maximise the value of financially stressed group of companies. **Economic benefit ought to be the sole purpose** and for that a preliminary searching enquiry is suggested which would yield benefit to stakeholders by off-setting any harm, if inflicted, if not consolidated."* (emphasis supplied)

16. The Learned Judge also acknowledged that

> *"the motion of 'consolidation' depends upon the facts and circumstances of each debtor/debtors.* ***It is appropriate and suitable to give a ruling at this occasion that there is no single yardstick or measurement on the basis of which a motion of consolidation can or cannot be approved.****"*

and then embarked upon measuring that case on the criteria of 'common control etc', thereafter noting that, since:

> *"on calling the 'expression of interest' there was no positive response. In such a scenario where no resolution applicants are interested, the companies will go into automatic liquidation"*

he directed consolidation of CIRP of various *Videocon* group entities which met the criteria so laid-out.

17. Essentially, while the *Videocon* judgement lists different criteria of 'common control etc' as basic ("rudimentary/elementary") ingredients to examine whether in a particular case the question of consolidation is worth considering, these criteria are not definitive for determining consolidation, contrary to what the present application implies. Therefore, it is essential to go beyond the preliminary assessment of criteria and determine whether consolidation would provide economic benefit to the stakeholders involved. As stated by the Learned Judge, "*the motion of 'consolidation' depends upon the facts and circumstances of each debtor/debtors*".

18. Now, this determination of economic benefit to the stakeholders can only be done by the CoCs of the respective CDs with their commercial wisdom, which as the Hon'ble Supreme Court

emphasized in the case of ***K. Sashidhar***[11], is paramount and not subject to judicial review.

19. In the present case, since the CoCs of both CDs have opposed the present application, it is evident that they don't see any economic benefit in consolidation of CIRPs. This is also another important distinction from *Videocon's* case where CoCs were more or less common and the case for consolidation of CIRPs was pursued by one of the creditors and not the suspended director as in the present case. Moreover, in absence of any resolution, the companies of *Videocon* group were headed towards liquidation – again, not the situation in the present case.

20. The determination of economic benefit to stakeholders is a matter that falls squarely within the commercial wisdom of the respective CoCs, a principle emphasized by the Hon'ble Supreme Court in ***K. Sashidhar*** (supra), which holds that the commercial wisdom of the CoC is paramount and not subject to judicial review. As per the Hon'ble Supreme Court[12],

> "…the *commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings*

[11] K. Sashidhar v Indian Overseas Bank and Ors. : (2019) ibclaw.in 08 SC
[12] Para 33 of SC order in K.Shashidhar (supra)

> *through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."*

In the case in hand, the CoCs of both CDs have opposed the application, clearly indicating they see no economic benefit in consolidating the CIRPs.

21. On facts too, the present case is clearly distinguishable from *Videocon*, where the creditors were largely common across all entities, and the request for consolidation was brought by a creditor, not by a suspended director, as is the case here. Additionally, in *Videocon*, the group companies were on the brink of liquidation in the absence of a resolution—an issue that does not arise in the present circumstances. Therefore, the criteria of 'common control etc' espoused in *Videocon* cannot be applied to this case in isolation.

22. The Applicant also relies on the case of ***Radico Khaitan*** (supra), which involved two Corporate Debtors without any resolution plan, and where their CoCs had resolved to proceed with liquidation. In that context, the Hon'ble NCLAT applied the criteria outlined in *Videocon* and ruled in favor of consolidating the CIRPs of both CDs. However, this case, too, cannot be applied to the present circumstances solely based on the criteria of 'common control etc', as this serves merely as an initial consideration for consolidation and not the decisive factor.

23. In the ***Oase Asia Pacific*** case, the CoC of the holding company sought to consolidate its CIRP with those of its wholly-owned subsidiary companies. Although the CoC (comprising only operational creditors) of one subsidiary opposed consolidation, the Hon'ble NCLAT upheld the Adjudicating Authority's decision to order consolidation of the CIRPs. In contrast, in the present case, the CoCs of neither the holding company nor the subsidiary are seeking consolidation of their CIRPs.

24. The case of ***Giriraj Enterprises*** (supra), also cited by the Applicant, was decided in light of a Mediator's Report, which indicated "*unanimity that the Resolution Plan must be a single one for both Companies and efforts should focus on identifying a single entity to purchase both Companies.*" The Hon'ble NCLAT, acknowledging the Mediator's observations, noted that "*this unanimity was reached by the Mediator after prolonged discussions with the Resolution Professionals and the CoCs of both Companies.*" The Hon'ble NCLAT further emphasized that the "***Commercial Wisdom of the CoC is of paramount importance***" and that "*the commercial wisdom of the CoC of the Subsidiary Companies should also be given equal importance and cannot be circumvented under the facts of this Case.*"

25. From the foregoing analysis of the case laws cited by the Applicant, it can be concluded that while the parameters of common control and similar criteria outlined in *Videocon* can serve as a starting point for evaluating the consolidation of CIRPs of related entities, consolidation should only be pursued if the CoCs of the involved entities (with requisite majority in the debt share), exercising their commercial wisdom, see an economic benefit from such an action.

26. As observed by the Learned Judge in the *Videocon* judgment, "***there is no single yardstick or measurement on the basis of which a motion of consolidation can or cannot be approved***." Therefore, in the present case, the decision to consolidate, or not, rests with the CoCs, who are not only better equipped to make such determinations but also have a vested interest in the outcome, and whose commercial wisdom is paramount in insolvency matters and beyond judicial review.

27. Here, for both Corporate Debtors, MCL and MRHPL, the CIRPs are at an advanced stage. Both have separately attracted a substantial number of EoIs and received multiple viable resolution plans. The CoCs of both CDs have approved the respective Resolution Plans with the requisite majority, and applications for their approval are currently pending before this Authority. This application, seeking consolidation of the CIRPs of both CDs at such a late stage by a suspended director with no stake in the outcome, is only an attempt to disrupt the successful resolution process of the Corporate Debtors.

This application is without merit and is therefore dismissed, with a cost of Rs 5.0 lakhs, to be deposited in `Bharatkosh'.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

VL