



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

CP (IB) No. 320 of 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:

CATALYST TRUSTEESHIP LIMITED

GDA House, Plot No. 85, Bhusari Colony (Right),
Paud Road, Pune- 411038 and branch office at
Windsor, 6th Floor, Office No – 604, C.S.T. Road,
Kalina, Santacruz (East), Mumbai – 400 098.

...Applicant/Financial Creditor

Versus

MANJEERA CONSTRUCTIONS LIMITED

Having their registered office at 711, Manjeera Trinity Corporate,
JNTU-Hitech City Road, Kukatpally, Hyderabad-500072

... Respondent/Corporate Guarantor/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 Applicant : Mr. Sanjay Kishore, Advocate
For Respondent : Mr. K. Manoj Reddy, Advocate

ORDER
[PER: BENCH]

1. This is a petition filed under section 7 of Insolvency and Bankruptcy Code, 2016 by M/s. Catalyst Trusteeship Limited (**"Petitioner"**) seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against the

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Corporate Debtor/Corporate Guarantor M/s. Manjeera Constructions Limited, [CIN: L45200TG1987PLC007228](“**Corporate Debtor/Corporate Guarantor**”).

2. The Corporate Debtor was incorporated on 02.03.1987, under the Companies Act, 1956 and the registered office address is at 711, Manjeera Trinity Corporate, JNTU-Hitech City Road, Kukatpally, Hyderabad-500072. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make payment of INR 202,44,23,868/- (Rupees Two Hundred Two Crores Forty-Four Lakhs Twenty-Three Thousand Eight Hundred and Sixty-Eight only) as on 31.08.2022. As on March 31, 2023, the Corporate Debtor is in default of INR 226,69,70,197/- (Rupees Two hundred and twenty six crores sixty nine lakhs seventy thousand and one hundred and ninety seven only) under the Facility Agreement dated 13-08-2018 executed between the parties.

4. Submission of learned Counsel appearing for the Financial Creditor:

- 4.1. 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).*
- 4.2. 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

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

- 4.3. 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 and seventy four crores and eighty lakhs only) to the Corporate Debtor in two tranches i.e., Rs.100,00,00,000/- (Rupees One Hundred crores only) on 13.08.2018 and Rs.174,80,00,000/- (Rupees one hundred and seveny four lakhs eighty thousand only) on 14.08.2018.
- 4.4 Subsequently, Vistra in its capacity as the Security Trustee/Facility Agent, the borrower, Corporate Manjeera Construction Limited, Altico and Fedbank entered into an Assignment Agreement dated 30.07.2019 whereby, Altico assigned a part of the Facility i.e. Rs.25,00,00,000/- (Rupees Twenty Five crores only) to Fedbank and continued its participation in the balance amount of up to INR 300,00,00,000/- (Rupees Three hundred crores only) ("**Balance Facility**").
- 4.5 Due to COVID-19, at request of Principal Borrower for granting moratorium on the repayment, Altico issued a letter dated 14.09.2020 granting various relaxations to Principal Borrower including the tenure

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extension for six months for repayment by giving the due dates from 30.06.2021 and 30.06.2022 to repayment as 31.12.2021 and 31.12.2022.

- 4.6 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”*, as such the Applicant became the full and absolute legal owner to receive the repayment of the said debts owed by the Principal Borrower.
- 4.7 In terms of the Facility Agreement, the Corporate Debtor repaid the instalment due on 30.06.2020. However, payments with respect to the second instalment were defaulted on its due date i.e. on 31.12.2021(**“date of default”**)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 behind 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).
- 4.8 It is submitted that the Principal Borrower has defaulted on the instalment of principal amount due on the quarter ending December 2021 and payment of interest for the quarters ending March 2022 & June 2022. The Principal Borrower 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

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with the Assignment Agreement) stands at INR 202,44,23,868/- (Rupees two hundred and two crores)

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

4.10 They relied on the following judgement of the *Hon'ble Supreme Court in the case of Laxmi Pat Suran Vs. Union of India and another (2021) 8 SCC 481* where it was held that:

"21. Section 7 is an enabling provision, which permits the financial creditor to initiate CIRP against a Principal Borrower. The Principal Borrower can be the principal borrower. It can also be a corporate person assuming the status of Principal Borrower having offered guarantee, if and when the principal borrower/debtor (be it a corporate person or otherwise) commits default in payment of its debt.

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As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a Principal Borrower if it happens to be a corporate person, within the meaning of Section 3(8) IBC. For, as aforesaid, the expression "default" has also been defined in Section 3(12) IBC to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the Principal Borrower, as the case may be."

4.11 It is submitted that in the present case, Altico initially sanctioned a term loan facility which was assigned to the Applicant and to be paid in three instalments vide Facility Agreement and the last instalment payable by 30.06.2020. However, at request of Principal Borrower, Altico extended

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the time for repayment until 14.09.2020 and the said loan was disbursed against time value of money. However, the Principal Borrower as well as the Corporate Guarantor have failed to repay the outstanding debts despite receipt of the Acceleration Notice dated 12.09.2022 and guarantee invocation letter dated 13.09.2022. Therefore, the Principal Borrower owes a financial debt to the Applicant for its failure to make payments of the principal and the interest due as per terms of Facility Agreement. As per the Unattested Deed of Guarantee dated 13.08.2018 the Corporate Guarantor is liable to pay the entire amount under the Balance Facility. The financial creditor is taking independent steps to initiate recovery of the loan amount from the Principal Borrower and the personal guarantor.

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

6.1. Admittedly, it is a fact on record that the Principal Borrower "MRHPL" approached the Petitioner/Applicant for refinancing the Projects and availed a term loan facility of Rs.325,00,00,000/- from the lender "Altico" with Vistra ITCL (India) Limited acting as the Facility Agent, MCL as the Corporate Guarantor and Mr. G. Yoganand, the promoter of Manjeera Group, as a Personal Guarantor vide Facility Agreement dated 13.08.2018 executed among them to disbursed amounts in three tranches *which are inter-alia* secured by the Projects and security was provided to Altico.

6.2. The Principal Borrower had repaid in advance the principal instalment of Rs.49,01,80,119/- (Rupees forty nine crores one lakh and eighty thousand and one hundred and nineteen only) during the Financial Year 2018-19 itself which was actually due in the month of June 2020.

6.3. On 30.07.2019, Altico assigned a part of the facility, Rs.25,00,00,000/- to Fed bank Financial Services Ltd. (**Fedfina**) vide Assignment Agreement dated 30.07.2019. As on assignment date, the





MRHPL had repaid an amount of Rs.64,91,80,119/- (Rupees sixty four crores ninety one lakh eighty lakh one hundred and nineteen only) and again during the Financial Year 2019-20, the MRHPL had repaid Rs.34,62,06,730/- (Rupees thirty four crores sixty two lakhs and six thousand and 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 and sixty six crores sixteen lakhs thirteen thousand one hundred and fifty one only).

- 6.4. It is stated that as the Projects were being developed on parcels of land awarded by Telangana Housing Board (THB) who was entitled to a revenue share from the sale proceeds. Accordingly, a portion of the term loan facility of Rs.40 Crores was earmarked towards the payment to be made to THB.
- 6.5. The MRHPL had repaid Rs.83,63,86,849/- (Rupees eighty three crores sixty three lakhs eighty six thousand eight hundred and forty nine only) towards the principal amount and Rs.49,72,64,549/- (Rupees forty nine crores seventy two lakhs and sixty four thousand five hundred and forty nine only). towards interest accrued and it is an admitted fact that the MRHPL was able to keep-up with its repayment obligations without demur or delay having paid in excess of Rs.130 Crore in a matter of a year and half.
- 6.6. The MRHPL vide its email dated 30.03.2020 requested Altico to explore granting the reliefs under the RBI circular. As MRHPL had a balance interest due of Rs.2,32,86,550/- (Rupees two crores thirty two lakhs eighty six thousand five hundred and fifty only) and no outstanding principal repayment due during the said period, to that 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.

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The MRHPL 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. It is stated that between April 1, 2020 to March 31, 2022, the ICDs extended to MRHPL by MCL rose from Rs.53,63,11,121.87/- Rupees fifty three crores sixty three lakhs eleven thousand one hundred and twenty one only) to Rs.64,36,35,710.07/- Rupees sixty four crores thirty six lakhs thirty five thousand seven hundred and ten only) to ensure that interest for quarter ending September 2020 and December 2020 were remitted, albeit with some delay.

- 6.7. Due to pandemic, the MRHPL vide its letter dated 30.09.2020 once again highlighted the impact of the lockdown on the business and rentals of Manjeera Mall and requested Altico to consider waiving the step up interest rate of 2% and reduce the applicable interest on the loan facility from 14.25% to 12% and Vide letter dated October 30, 2020, principal borrower had also requested Altico to provide the benefit of Emergency Credit Line Guarantee Scheme (ECLGS but Altico did not considered any of the requests. Further, vide a letter dated December 21, 2020, MRHPL requested Altico to reconsider a waiver of the interest component and release the ISRA amount to be adjusted against the interest dues and in this regard submitted a detailed proposal. Altico compelled servicing the interest in full resulting in further hardship for MRHPL. MRHPL vide its email dated June 29, 2021, once again pressed the disbursement of the ISRA amount for settling the interest accrued in quarter ending March 2021. MRHPL proposed sale consideration with promoter contribution, the disbursed ISRA amount could be recouped. Altico refused to grant this benefit resulting in payment of the interest being delayed (Annexure-F).




6.8. It is stated that with respect to leasing Manjeera Mall to one entity, the MRHPL was in negotiations with LULU International Shopping Malls Private Limited (LULU) and Altico was aware of the same. Due to lack of co-operation and without any consideration placed on the steps and the process of raising finances being taken by MRHPL, Altico has filed the present application.

6.9. It is submitted that the Applicant is not the original lender, but has obtained the rights of Altico by way of assignment of debt against consideration paid. The Applicant's intention is purely for recovery only and there is no premium placed nor an intention expressed for any resolution of MCL. In this regard, reliance is placed 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*

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wrongful motive need not be a mala 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.***

6.10. The procedures prescribed in the Code, under Section 7, are not mechanical in nature and does not automatically warrant admission on demonstration of an instance of default and they relied on ruling 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 is wholly applicable to the present case.

Analysis and Findings

6. After hearing counsels from both sides and considering the case laws and other records submitted to us, we are of the considered view that 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, an amount of Rs. 45,12,76,552/- became due and payable on 31.12.2021 and the corporate debtor has defaulted in the payment. Therefore, there exists a debt of a sum over Rupees One Crore due and payable by the Corporate Debtor/ Guarantor and Corporate Debtor/ Guarantor has defaulted in repayment of the same.

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7. The Corporate Debtor/ Guarantor 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) with respect to Section 65.* 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 debt due is apparent on the face of record. The NeSL certificate is filed in proof of the same. Hence, this judgement cannot be relied upon while deciding on the application in the present case.
8. The counsel for the corporate debtor has also taken the plea of commercial solvency of the Corporate Debtor placing reliance on the *judgement in Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd. (2022) 8 SCC 352* which, in our view are not of relevant consideration as an application filed U/s 7 of IBC, 2016 can be admitted once there is a debt which is due and payable and there occurred a default in repayment thereof and these conditions are satisfied in the present case as upon default committed by the principal borrower, the liability of the company, being the guarantor, instantly triggers the right of the financial creditor to proceed against the corporate guarantor.
9. Even the intentions and promises of Corporate Debtor are under question as financial creditor has alleged that the amounts received by the Corporate Debtor 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

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prior approval of the Applicant, the Corporate Debtor 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 Corporate Debtor to deposit the money which Corporate Debtor has received on account of unauthorised transfer of rights in the secured properties. All these facts emphasis 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.

10. In the light of the above facts and circumstances, it is, hereby ordered as follows:-
 - a. The application bearing **CP(IB) No.320 of 2022** filed by **Catalyst Trusteeship Limited**, the Financial Creditor has due compliance of the requirements in terms of Section 7(3) of the Code, 2016, 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. 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 against Manjeera Constructions limited, the Corporate Debtor.
 - b. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



- c. Mr. Vamsi Kambhammettu, Registration No.: IBBI/IPA-001/IP-P00664/2017-2018/11141, E-mail ID: raoandraoca@gmail.com, Ph.: 9866122632, R/o A85,DX4,ROAD NO 11, FILM NAGAR, JUBLIEE HILLS Hyderabad - 500033, as the Interim Resolution Professional (IRP) of the Corporate Debtor and the AFA filed by the proposed IRP has expired on 14.12.2022, hence he is directed to file renewed Authorization for Assignment to registry before taking up the assignment to carry out the functions as per the Code subject to submission of a valid Authorisation for Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- d. 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 on by the Committee of Creditors.
- e. The IRP is directed to take charge of the management of the Corporate Debtor/ Guarantor, 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.
- f. 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. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be. It is hereby ordered that all of 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 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.*
- g. 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 arrangement as may be notified by the Central



Government in consultation with any financial sector regulator or any other authority.

- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. 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.
- j. The Registry is directed to communicate this Order to the Applicant and the Corporate Debtor.
- k. 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.
- l. Accordingly, this Petition CP (IB) NO 320 OF 2022 is admitted


RAMALINGAM SUDHAKAR
PRESIDENT


CHARAN SINGH
MEMBER(TECHNICAL)

Chennu Bhargavi