

**THE NATIONAL COMPANY LAW TRIBUNAL  
COURT V, NEW DELHI**

**I.A No. 6303/2022**

**IN**

**Company Petition No. (IB) – 771/PB/2018**

*Under Section 60(5) read with Section 42 of the Insolvency and  
Bankruptcy Code, 2016 along with Rule 11 of NCLT Rules, 2016.*

**IN THE MATTER OF:**

**CAPRI GLOBAL CAPITAL LIMITED**

502, Tower A, Peninsula Business Park,  
Senapati Bapat Marg, Lower Parel, Mumbai  
Mumbai City, MH 400013

**.... PETITIONER**

**VERSUS**

**VALUE INFRATECH INDIA PRIVATE LIMITED**

(Through the Liquidator)  
D-32, East of Kailash,  
Head Office of AAGN & Associates,  
New Delhi, 110065

**.... CORPORATE DEBTOR**

**AND IN THE MATTER OF-**

**MR. RAJNEESH TYAGI**

338, Meerut Road, Village Po Morta,  
Pargana, Jallalabad, Ghaziabad,  
Uttar Pradesh-201001

**.... APPLICANT**

**Order Pronounced on: 04.06.2024**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicant:** Mr. Kumar Deepraj, Ms. Aditi Lekhi, Advs.

**For the Respondent:** Mr. Rishabh Jain, Adv

**ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

1. This application has been filed under Section 60(5) read with Section 42 of the Insolvency and Bankruptcy Code, 2016 along with Rule 11 of the National Company Law Tribunal Rules, 2016 by the applicant, Mr. Rajneesh Tyagi praying for adjudication of the Applicant's claim against the Corporate Debtor and for setting aside the decision of the Liquidator rejecting the Applicant's Claim.
2. The applicant in the present application has prayed for the following reliefs: -
  - a) *Allow the present application and accept the claim of the Applicant against the Corporate Debtor amounting to Rs. 5,00,00,000/- (Rupees Five Crore Only) with an interest of 18% p.a. from the date of the cheque till the order of liquidation; **OR, in the alternative** Set aside the decision of the Ld. Liquidator passed on 25.11.2022 whereby the claim of the applicant against the CD has been rejected and direct the Ld. Liquidator to accept and allow the claim of the applicant against the Corporate Debtor amounting to Rs. Rs. 5,00,00,000/-(Rupees Five Crore Only) with an interest of 18% p.a. from the date of the cheque till the order of liquidation.*
  - b) *Pass any such other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*
3. ***Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -***
  - (a) The applicant has filed a Claim Form for Claim of Rs. 18,35,20,547/- along with relevant documents, on 29.09.2022 before the Liquidator, Mr. Gaurav Katiyar, under Regulation 20 of the Insolvency and Bankruptcy Code, 2016 in respect of Corporate Insolvency Resolution Process of M/s Value Infratech India Private Limited.

However, the Claim was rejected by the Liquidator vide email dated 25.11.2022.

- (b) The Claim of the Applicant is based on wherein M/s Maxout Infrastructure Pvt. Ltd., a sister concern of the Corporate Debtor availed a working capital loan of Rs. 8,00,00,000/- from IDBI Bank for which the applicant has created a simple Mortgage (without possession) on his land through Mortgage Deed dated 03.04.2014. To secure the interest of applicant, the Corporate Debtor has entered into a Memorandum of Understanding /Corporate Guarantee Agreement dated 30.04.2014 with the Applicant and M/s Maxout Infrastructure Pvt. Ltd.
- (c) Thereon the Corporate Debtor undertook to be a guarantor in order to counter indemnify the Applicant in case M/s Maxout Infrastructure Pvt. Ltd. Unable to pay its dues to IDBI. The Corporate Debtor further created lien on 18 units amounting to Rs. 5,00,00,000/- in favour of Applicant in the then proposed residential project under the name of Sky Walks situated in Ghaziabad, Uttar Pradesh. The Corporate Debtor also issued a cheque of Rs, 5,00,00,000/- bearing Cheque No. 377982 dated 30.04.2016 in favour of Applicant with the express understanding that if land of Applicant is not released by M/s Maxout Infrastructure Pvt. Ltd. Till 30.01.2016, the Corporate Debtor shall be liable to pay an amount of Rs. 5,00,00,000/- to the Applicant and the Applicant shall have right to encash the said cheque.
- (d) M/s Maxout Infrastructure Pvt. Ltd. unable to get non-encumbrance certificate with regard to mortgaged lands of the Applicant and the IDBI Bank has initiated action under SARFAESI Act, 2003. In view of Corporate Guarantee Agreement dated 30.04.2014, the Applicant deposited the cheque bearing no. 377982 dated 30.04.2016 with the bank which was returned as dishonoured. Thus, the Applicant expeditiously initiated proceedings under Section 138 against the

Corporate Debtor. Further, no one appeared on behalf of Corporate Debtor.

- (e) The Liquidator has dismissed the Claim of Applicant vide email dated 25.11.2022 on the basis that the Corporate Debtor is nota party to Mortgage/Loan agreement between the Applicant, M/s Maxout Infrastructure Pvt. Ltd. And the IDBI Bank.
- (f) The Liquidator failed to consider the claim of Applicant and he ought to have taken note of MoU/Corporate Guarantee Agreement dated 30.04.2014, though which the Corporate Debtor has undertaken to be a guarantor qua the dues of M/s Maxout Infrastructure Pvt. Ltd. Towards the Applicant. The Liquidator has failed to notice the security cheque in favour of Applicant and lien on 18 flats as security to the Applicant. The Liquidator ought to have considered that the said lien cannot be discharged till the amount due to the Applicant is paid by the Corporate Debtor.
- (g) The Liquidator has failed to consider the cheque issued by the Corporate Debtor and the presumption of Section 139 of the Negotiable Instruments Act, 1881. Furthermore, the said presumption has never been rebutted by the Liquidator on behalf of Corporate Debtor and the Corporate Debtor itself. The Liquidator erred in holding that no consideration has travelled from applicant to the Corporate Debtor which is also perverse in the Contractual Jurisprudence. The Applicant contended that the presumption under Section 118(a) and 139 is a rebuttable presumption and onus to rebut the said presumption lies completely on the drawer of the Cheque and the Liquidator has never rebutted the same.
- (h) The Applicant in its rejoinder to the reply of Liquidator asserted that the RP has failed to appreciate the purport of Section 127 of the Contract Act, 1872 and therefore wrongly averred that the Corporate Guarantee Agreement dated 30.04.2014 is without any consideration.

- (i) The Liquidator stated that the Applicant's Cheque which was issued for alleged debt provided two different transactions. The Applicant states that both the pleadings as stated before ACJM 4<sup>th</sup> Ghaziabad and in the instant application are the narration of same transactions.
- (j) The Liquidator has illegally rejected the claim of the Applicant and erred in settled jurisprudential principles while disregarding the Counter Indemnity Agreement/MoU dated 30.04.2014 and the presumption of Section 139 of Negotiable Instruments Act, 1881. The Claim of the Applicant is ought to be considered and accepted in terms of I & B Code, 2016 as Secured Financial Creditor for the amount of Rs. 5,00,00,000/- with interest @ 18% p.a. from the date of issuance of Cheque which constitutes a legally payable debt.

**4. Contentions asserted by the Learned Counsel appearing on behalf of the Liquidator in reply to the present Application.**

- (a) The Liquidator asserted that the Corporate Guarantee relied upon by the Applicant is without any consideration. Hence, the alleged MoU/Corporate Guarantee Agreement is null and void in terms of Section 25 read with illustration (c) of Section 127 of the Indian Contract Act, 1872.
- (b) The ex-directors of the Corporate Debtor are absconding and the Liquidator has not received any record (including books of account, information, documents etc.) of the Corporate Debtor from the ex-management. Therefore, the claim of the applicant had been considered on the basis of documentary evidence available with the Liquidator. From MCA21 inspection of the Corporate Debtor it is transpired that the alleged MoU/Corporate Guarantee Agreement dated 30.04.2014 was executed without passing a valid Resolution as required under Section 179(3), 186(2)(b) & (3) read with Section 117 of the Companies Act, 2013.
- (c) The Applicant has not disclosed this material fact that a Civil Suit for mandatory injunction and declaration of title of applicant in 18 flats before the civil court of Ghaziabad which was dismissed by the

Ld. Trial Court. Hence, this Adjudicating Authority cannot interfere in binding and subsisting decree/rejection order passed by the Court of Competent Jurisdiction.

- (d) The alleged Cheque bearing no. 377982 dated 30.04.2016 was not issued for any legally enforceable debt or other liability outstanding to the Corporate Debtor qua the Applicant. The complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 against the Corporate Debtor reveals that facts mentioned by the Applicant in the claim form is different from the Complaint filed by the Applicant. Bare perusal of the Complaint reveals that as per the Complaint the Corporate Debtor has borrowed a sum of Rs. 5 Cr. Which the applicant has given to the Corporate Debtor after selling his land.
- (e) The presumptions raised under Section 118(a) and 139 of the Negotiable Instruments Act, 1881 is a rebuttable presumption. Moreover, the averments mentioned in the Claim Form is not matching with the averments made in the complaint before ACJM 4<sup>th</sup>, Ghaziabad. Therefore, the facts of the applicant cannot be relied upon.
- (f) As per the Clause 6 of the alleged MoU dated 30.04.2014, the applicant did not have any legal right, interest, title of any nature on 18 units and the applicant cannot mortgage, create lien etc on such units. Further, Section 17 of the Registration Act, 1908 requires compulsory registration of the document and as per Section 49 unregistered document cannot create a lien in immovable property.
- (g) Therefore, the Claim of the Applicant is rejected in terms of settled principles of law.

### ***Analysis and Findings***

5. We have heard the Learned Counsels for the Applicant, and further perused the averments made in the Application, Reply filed by the Liquidator, Rejoinder filed by the Applicant and written submissions

presented by the Parties. The applicant has filed this application under Section 42 of the Insolvency and Bankruptcy Code, 2016 against the order of Liquidator rejecting the claim of Rs. 18,35,20,547/- submitted in Form G under Regulation 20 of Liquidation Process Regulations, 2016.

6. Section 42 of Insolvency and Bankruptcy Code, 2016 provides as follows,

**Section 42. Appeal against the decision of liquidator:** *A creditor may appeal to the Adjudicating Authority against the decision of the liquidator [accepting or] rejecting the claims within fourteen days of the receipt of such decision.*

7. The Applicant is seeking to impugn and set aside the decision of Liquidator passed on 25.11.2022 whereby the claim of the applicant against the Corporate Debtor has been rejected stating that the Corporate Debtor is not a party to Loan Agreement and the alleged MoU as relied by the applicant as Corporate Guarantee Agreement is without Consideration.

8. The Claim of the Applicant is entirely based upon the Cheque issued by the Corporate Debtor, Loan Agreement between M/s Maxout Infrastructure Pvt. Ltd., IDBI Bank and the Applicant and the MoU dated 30.04.2014. on bare perusal of the facts and the supporting documents it has been observed that the Cheque of Rs. 5,00,00,000/- was issued by the Corporate Debtor but the transaction for which it was issued is the disputed fact.

9. The Liquidator in its reply has asserted that the fact for which the Cheques was issued by the Corporate Debtor is entirely different from the transaction for which a complaint under Section 138 of the Negotiable Instruments Act, 1881 was made before ACJM 4<sup>th</sup>, Ghaziabad. As per complaint which was placed on record by the Liquidator reveals that the Corporate Debtor has borrowed as sum of Rs. 5,00,00,000/- which the applicant has given after selling his agriculture land situated at Village Moreta, Ghaziabad. In Contrast, the applicant has submitted that the same Cheque was issued pursuant to Corporate

Guarantee Agreement/MoU dated 30.04.2014 as a security. Hence, the fact that Cheque was issued against the MoU dated 30.04.2014 as security as alleged by the Applicant cannot be relied upon due to disparity with Complaint bearing case no. 573/2016 in court of ACJM, Ghaziabad.

10. The Applicant pleaded that the Corporate Debtor has created a lien on 18 units of its Real Estate Project 'Sky Walks' in furtherance of MoU/Corporate Guarantee Agreement dated 30.04.2014 in order to counter indemnify the applicant in case of default by M/s Maxout Infrastructure Pvt. Ltd. Though the Liquidator contended that the alleged MoU is neither been registered nor been supported by necessary Board Resolution as per Companies Act, 2013. The Ld. Trial Court also dismissed the suit filed by the applicant for mandatory injunction on the basis of MoU dated 30.04.2014, therefore, making doubts in the veracity and genuineness of the documents as relied by the Applicant in support of its claim.
11. In sequel to the above, we find no error in the decision of the Liquidator rejecting the claim of the Applicant. Hence, we are not inclined to interfere with the decision of the Liquidator. With the aforesaid observation, **IA No. 6303 of 2022 in CP(IB) No. 771/PB/2018** stands **dismissed** and is accordingly disposed of.
- Let a copy of this order be served to parties.

**Sd/-**  
**(DR. SANJEEV RANJAN)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**