

SL. No.1

**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 20.02.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/53/2024 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)/53/2024

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

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

I.A.No.53 of 2024 in
CP (IB) No.296/07/HDB/2022

In the matter of
M/S. MANJEERA RETAIL HOLDINGS PRIVATE LIMITED

Between:

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

.... Applicant

Vs.

1. Mr. Birendra Kumar Aggarwal,
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. The Committee of Creditors of
M/s. Manjeera Retail Holdings Private Limited.

....Respondents

Date of order : 20.02.2024

CORAM:

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

Counsels present:

For the Applicant : Mr. Niranjan Reddy, Senior Advocate
Mr. Y. Suryanarayana, Advocate

For the Respondent 1 : Mr. M.S. Prasad, Senior Advocate
Mr. Srikant Rath, Advocate

For the Respondent 2 : Mr. Ramji Srinivasan, Senior Advocate
Mr. Palash, Advocate

Heard on : 07.02.2024

Per : Sanjay Puri, Member (Technical)

ORDER

1. This application is filed by the Member of suspended Board of Directors of the Corporate Debtor (CD) M/s. Manjeera Retail Holdings Private Limited, seeking
 - a) directions to the Respondent/Resolution Professional to take necessary steps to register the CD as an Udyam enterprise, i.e., an enterprise under the MSMED Act, 2006, and to obtain the Udyam Registration Certificate from the Udyam Registration portal;
 - b) directions to the Resolution Professional to consider the Expression of Interest (EoI) submitted by the Applicant and to include the name of the Applicant in the Final List of Prospective Resolution Applicants eligible to submit Resolution Plan for the CD, subject to the outcome of the present application;
 - c) to grant an ad-interim stay restraining the Resolution Professional from taking any further steps concerning the

final list of Prospective Resolution Applicants pending the disposal of the instant Application;

- d) to grant an order and/or direction upon the Resolution Professional to consider the EoI submitted by the Applicant and to include the name of the applicant in the final list of Prospective Resolution Applicants eligible to submit a Resolution Plan for the CD.
2. Filing of this application is prompted by the refusal of the Committee of Creditors (CoC) represented by the Respondent, to permit Agenda No. 3, which pertains to the Registration of the CD as a Micro Small Medium Enterprise (MSME). This denial is grounded in the assertion that a list of Prospective Resolution Applicants (PRAs) has been shared and finalized. According to the CoC registering the CD under MSME Act would be deemed a "Backdoor" entry for the suspended Promoters.
3. The CD was admitted into CIRP¹ by this Tribunal vide Order dated 18.07.2023 against the application filed under Section 7 of the Code by the Financial Creditor (FC) M/s. Catalyst Trusteeship Limited, and appointed Mr. Vamsi Kambhammettu as an IRP² on 16.08.2023. Subsequently on 14.09.2023, this Tribunal granted approval for the appointment of Mr. Birendra Kumar Agrawal as the Resolution Professional (RP) for the CD.
4. The initial Expression of Interest (EoI) was published in Form G on 22.09.2023, with a deadline date as 22.10.2023 for submission of EoI along with the supporting documents.

¹ Corporate Insolvency Resolution Process

² Interim Resolution Professional

5. The Applicant is a Suspended Director and Promoter of the CD, submitted its Expression of Interest (EoI) vide an email dated 20.10.2023, accompanied by relevant annexures³ as per Form G. Further during the 2nd meeting⁴ of CoC held on 25.10.2023, RP shared the list of Prospective Resolution Applicants (PRAs) to the CoC members included the name of the Applicant in the provisional list for EoIs submitted until 22.10.2023.
6. However, the Respondent, through an email dated 08.12.2023, rejected the EoI submitted by the Applicant, citing errors in the declaration submitted by the Applicant vide an email on 20.10.2023. Simultaneously, the Respondent shared a list of PRAs⁵ with the CoC members, omitting the name of the Applicant. Responding to this, the Applicant submitted a revised Annexure A⁶ with the accurate Declaration under Section 20A, read with Section 240A, vide an email dated 09.12.2023.
7. During the 4th Meeting⁷ of the CoC held on 15.12.2023, the EoI submitted by the Applicant was rejected by the RP, citing, among other reasons, that since the CD is not MSME, the Applicant being suspended promoter/director was ineligible under Section 29A(c) and (h) of the IBC.
8. The Applicant, then reached out to the Respondent through emails⁸ dated 19.12.2023 and 20.12.2023, urging the inclusion of his name in the Final PRAs List. He also requested the Respondent to consider registering the CD as a MSME to leverage various benefits and enhance the value of the CD's assets.

³ Pg 31-53 of the Application

⁴ Pg 54-68 of the Application

⁵ Pg 69-72 of the Application

⁶ Pg 73-78 of the Application

⁷ Pg 79-86 of the Application

⁸ Pg 87-88 of the Application

9. However, during the 5th Meeting of CoC held on 22.12.2023, the proposal concerning the MSME registration of the CD was not accepted, citing concerns that permitting the same would lead to a back-door entry of the Suspended Director.
10. It is asserted that the argument regarding a backdoor entry was wholly misconceived and lacked merit. It is contended that obtaining registration under the MSME Act would promote competition among the Resolution Applicants. Case decided by Hon'ble NCLAT in the case of *Saravana Global Holdings Ltd. v. Bafna Pharmaceuticals Limited, CA(AT) (Ins) No. 203 of 2019, dt. 4.7.2019* was cited in this regard. Also referred to the decision of Hon'ble Supreme Court in the case of *Hari Babu Thota vs Others in C.A. No. 4422/2023, dt. 29.11.2023*.
11. Citing Government of India Gazette Notification⁹ No. S.O. 2119-E dated 26 June 2020, it was claimed that the CD falls within the classification of MSME.
12. It is further contended that, the RP should have included the name of the Applicant in the list of PRAs. Later, the RP could have assessed the feasibility and viability of the Resolution Plan for maximizing the value of the assets of the CD. It is emphasized that the RP overlooked the legislative intent of the Code, which is to maximize the value of the CD's assets to ensure its efficient operation as a going concern, ultimately promoting entrepreneurship. The Applicant, in this context expressed the intention to pay the amount to the satisfaction of the CoC and regain control of the CD. It is further asserted that, without prejudice, the Applicant is not otherwise disentitled under the provisions of the Code.

⁹ Pg 89-110 of the Application

13. Cases of *Swiss Ribbons Private Limited and Anr. v. Union of India & Ors*, (2019) 4 SCC 17, and *Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Mittal* (2019) 2 SCC 1, have been cited in support of these contentions, besides referring to the cases decided by NCLT Kolkata and Mumbai Benches in *Barnaparichay Book Mall Private Limited*, C.P. (IB) No. 1219/KB/2018, and *Vistar Metal Industries Private Limited*, C.P. (IB) No. 1331/MB/2017 respectively.
14. It is argued that considering the various benefits of MSME status, RP should have considered registering the CD as an MSME. It is further submitted that, as per Section 25(1) of the Code, it is the duty and responsibility of the RP to safeguard the assets of the CD, including the continuation of its business operations. Hence, the RP should have strived to maintain the CD as a going concern by obtaining the certificates for which the CD is entitled, as the CD would have received several benefits if it had an MSME Certificate. Hence, this application for the above said relief.

Respondent's Counter

15. It was initially asserted that, the Application is liable to dismissal on the ground of non-joinder of parties. It was contended, that while the Application was filed due to the CoC's refusal to allow the registration of the CD as an MSME, it did not include the CoC as a party to the ongoing proceedings. Later, during the proceedings however, the CoC was also impleaded as a party, and this argument became infructuous.
16. In the other arguments it is contended that, from the date of admission into CIRP until the rejection of the EoI, the Applicant had not previously raised the contention regarding the registration of the CD as an MSME. The Applicant introduced this contention only upon the rejection of their EoI. This indicated, according to the

Respondents, that the Application has been initiated solely to regain the control of CD by the suspended promoter/director through backdoor entry. In this regard, the Respondent referred the NCLT view in the cases of; ***Hi-Tech Resource Management Limited versus Overnite Express Limited***¹⁰, and ***Clearwater Capital Partners Singapore Fund V Pvt. Ltd. vs. Renaissance Urban-Infra Private Limited***¹¹.

17. It is stated that, the Applicant's request for the registration of CD as an MSME was placed to the CoC for approval, listed as agenda item 6 during the 5th CoC meeting on 22.12.2023. Following careful deliberation and discussions in the said meeting, the CoC exercising its commercial wisdom, opted to disapprove the resolution seeking MSME registration for the CD. It is averred again that, the request of the Applicant at this belated stage for registration of the CD MSME only demonstrates his attempts for a back door entry which is clearly contrary to the settled position of Law.
18. It is submitted that, no discernible efforts for registration were initiated by the Applicant, and having neglected to obtain UDYAM Enterprise status for the CD over an extended period, cannot now abruptly seek MSME status for the company.
19. It is claimed that the RP, in the exercise of powers and duties conferred by the provisions of the IBC, has diligently rejected the EoI submitted by the Applicant, deeming him ineligible to submit a Resolution Plan. Therefore, the contention put forth by the Applicant, suggesting that the Resolution Professional should have included the Applicant's name in the list of PRAs and subsequently assessed the feasibility and viability of the Resolution Plan for value

¹⁰ NCLT -Delhi in IA-3846/ND/2023 & IA-1175/ND/2022 in CP No. (IB)-2240(ND)/2019

¹¹ NCLT Mumbai - in IA-3177/2023 in C.P. (B)/308(MB)/2022

maximization, is without legal basis. Such a course of action, it is submitted, would be contrary to the provisions of IBC, as well as the established legal principles. It is further asserted that, the RP has been diligently taking necessary steps to safeguard the assets of the CD and making sincere efforts to sustain the business operations of the CD.

20. The CoC exercising its commercial wisdom during its 5th meeting, deliberated on the matter and observed that, considering the option of MSME registration at such a belated stage when the list of PRAs has already been finalized, is likely to result in legal challenges to the CIRP which is undesirable. It was stressed that it was in the interest of value maximization for the CD to conduct the CIRP process in a timely and efficacious manner.
21. It is averred that, the Applicant should have taken the necessary steps and made endeavours prior to the current juncture. The present Application, it is asserted, cannot be employed to circumvent the ineligibility under the IBC and the commercial wisdom exercised by the CoC.
22. It is thus submitted, that in view of the above facts, circumstances and the settled position of law, this Adjudicating Authority be pleased to dismiss this Application with exemplary costs.

Decision:

23. The Applicant in this case is a member of the suspended Board of Directors of the CD. During the CIRP he has presented himself as a Potential Resolution Applicant (PRA) and sought to submit a resolution plan. He was not allowed to do so for the reasons of his ineligibility under section 29A of IBC, as he was part of the suspended Board of the CD.

24. After finding his name excluded from the list¹² of the PRAs, the Applicant wrote¹³ to the RP to consider registering the CD as MSME. According to the Applicant, such registration would provide for exemption under section 240A, thus lifting the restriction imposed by section 29A, thereby allowing him to be considered as a PRA.
25. The insistence of the applicant for the RP to apply for MSME status for the CD is based on his belief that once the application for MSME certificate is applied by the RP, the exemption from section 29A provided by section 240A would apply to him and he would be able to submit his resolution plan as a PRA. The Respondents (RP & CoC) saw this as an attempt to obtain a 'back-door entry' into CIRP and rejected¹⁴ the proposal of the Applicant.
26. It is in this backdrop Ld Counsel of the Applicant has presented his arguments for our consideration in the form of following questions:
- Whether there is any legal bar on RP to apply for MSME status for the CD, if he considers it would be beneficial for the CD?
 - If the RP considers MSME status to be beneficial for the CD, should he not apply, only for the reason that the suspended Board member may get to participate in CIRP? and
 - Whether the RP should not take such a decision, without involving CoC in the process? And
 - Considering the legislative intent and the objectives of IBC, whether for the maximisation of value of the CD, the Applicant should not be included as PRA also?
27. Addressing the first question, Ld. Counsel canvassed on behalf of the Applicant that the RP is duty bound to apply for MSME status if

¹² Page 71 of the Application

¹³ Emails dated 19 & 20 Dec 2023 – Pages 87-88 of the Application

¹⁴ 5th CoC minutes – Page 24-30 of the Application

he considers it to be of benefit for the CD. There is no bar under any law to do so, it was argued. The cases of, **Hari Babu Thota**¹⁵ decided by Hon'ble Supreme Court, **Saravana Global**¹⁶ from Hon'ble NCLAT and **Hardrock Attachment**¹⁷ decided by Kolkata Bench of NCLT were also cited to support this argument.

28. We disagree. This argument implies that the RP has the subjective discretion to decide on matters not explicitly restricted by law. However, such subjective decision-making by the RP is not permissible under IBC, which governs his appointment and duties. The RP is expected to adhere strictly to the provisions of the law and exercise discretion within its defined boundaries, avoiding arbitrary actions that deviate from legal mandates.
29. The law of IBC requires very specific tasks to be accomplished by the RP in respect of CIRP of the CD. He assumes an interim and temporary role in managing the affairs of the CD until a resolution applicant is identified or until the CD undergoes liquidation. It's crucial to note that the RP does not possess ownership of the enterprise; rather, he functions as custodian during the CIRP period, stepping into the shoes of the management to fulfil the obligations outlined by the IBC.
30. The question thus should be, whether there is any provision in IBC that requires RP to apply for MSME status for the CD. The answer to that is in the negative.
31. Section 20 of IBC requires the RP shall make every endeavour to protect and preserve the value of the property of the CD and manage operations of the CD as going concern. While he is

¹⁵ Hari Babu Thota vs Shree Aashraya Infra-Con Ltd (RP) 2023 SCC Online Sc 1642

¹⁶ Saravana Global Holdings Ltd. v. Bafna Pharmaceuticals Ltd., 2019 SCC OnLine NCLAT 962

¹⁷ State Bank of India vs Hardrock Attachments Pvt Ltd 2023 SCC Online NCLT 595 dated 11.09.2023

authorised to take all such action as are necessary to keep the CD as going concern, there is nothing in that section that authorises him to take such actions which 'he' considers beneficial for the CD.

32. In any case, as noted in the minutes of the 5th CoC meeting “the suspended directors have not provided a single commercial/ business reason to maximise the value of the assets of corporate debtor after obtaining MSME registration”. Moreover, there is nothing on record to show that the RP in this case considered that it would be beneficial for the CD, if MSME registration is applied for.
33. All that Ld. Counsel was able to point out during the course of arguments was the following sentence from the minutes of 5th CoC meeting
- “The legal counsel Adv Srikant Rathi informed that there is a settled proposition wherein the RP can obtain MSME registration of the corporate debtor to avail benefits provided to MSME”
- This according to the Ld. Counsel showed that the RP considered it beneficial for the CD to obtain MSME registration.
34. The above ‘advice’ of the legal counsel is worded in general terms and does not imply, as suggested by the Ld Counsel, that he advised obtaining MSME certification as it would be beneficial for the CD in present case. In fact, as recorded in the very next sentence of the minutes of 5th CoC meeting, the same legal counsel informed the CoC that “...MSME registration cannot be obtained only to provide backdoor entry to the suspended director/promoter”.
35. Furthermore, it is noteworthy that the Applicant who was in control of the CD, did not take any steps to obtain MSME registration since 26.06.2020, when the criteria for classifying the enterprises as MSME was notified¹⁸ and till the commencement of CIRP on

¹⁸ Notification No. S.O. 2019€ dated 26 June 2020 – At page 108 of the Application.

18.07.2023. If the Applicant genuinely believed obtaining MSME certification was advantageous for the CD, it would have been reasonable to expect of him to initiate the necessary steps for obtaining such a certificate before CIRP commenced. The insistence by the Applicant, at the stage of selection of resolution applicants, that the RP should now seek MSME registration, is nothing but a blatant attempt on his part to include himself in the list of PRAs, despite his ineligibility under section 29A for such inclusion.

36. The next two questions posed by the Ld Counsel, that if the RP considers MSME status to be beneficial for the CD, should he not apply, only for the reason that the suspended Board member may get to participate in CIRP, and that whether the RP should not take such a decision, without involving CoC in the process, do not arise, as the RP never considered obtaining MSME status would be beneficial for the CD. The CoC with more than 96% voting right, in its commercial wisdom, did not consider seeking MSME registration beneficial for the CD and emphasized repeatedly in 5th CoC meeting that the same cannot be done only to provide 'backdoor entry' to the suspended director/promoter.
37. In the last question, that considering the legislative intent and the objectives of IBC, whether for the maximisation of value of the CD, the Applicant should not be included as PRA also, the Ld. Counsel sought to invoke this Authority's powers under section 60(5). One more is better than one less for value maximisation, he argued, and for that reason alone, the Applicant should be allowed to submit his resolution plan along with other selected PRAs.

38. Here we can usefully refer to the what Hon'ble Supreme Court held in the case of **Gujrat Urja Vikas Nigam**¹⁹, that

*Although various provisions of IBC indicate that the objective of the statute is to ensure that the corporate debtor remains a "going concern", there must be a specific textual hook for NCLT to exercise its jurisdiction. **NCLT cannot derive its powers from the "spirit" or "object" of IBC.** Section 60(5)(c) of IBC vests NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process. We hasten to add, however, that NCLT's residuary jurisdiction, though wide, is nonetheless defined by the text of IBC. Specifically, NCLT cannot do what IBC consciously did not provide it the power to do.*

From the above it is evident that this Authority cannot decide issues merely on the basis of the spirit or the objective, but only on the basis of the 'textual hook' expressly provided in IBC. The law with regard to the disqualification of suspended directors/promoters as resolution applicants is amply clear. We cannot decide contrary to the same on the pretext of 'value maximisation' being the objective, without heeding to the letter of the law contained in IBC.

39. None of the case-laws cited by Ld Counsel of the Applicant support the case of the Applicant:

- In **Hari Babu Thota**²⁰, Hon'ble Supreme Court engaged with the question of what would be the cut-off date for determination of disqualification under section 29A. In that case, the CD was not MSME on the date of initiation of CIRP, and for that reason, the promoter/directors were held to be ineligible. Later during CIRP, an application for MSME

¹⁹ CITATION

²⁰ Hari Babu Thota v. Shree Aashraya Infra-Con Ltd. (Resolution Professional), In re, 2023 SCC OnLine SC 1642

certificate was made, and in that factual scenario, it was held the cut-off date to ascertain eligibility of the resolution applicant would be the date of submission of resolution plan. *Ratio decidendi* of that case has no relevance in the present situation where there is no stipulation of MSME certificate before or after the commencement of CIRP.

- In **Saravana Global**²¹ Hon'ble NCLAT was dealing with a case where “Admittedly, the ‘Corporate Debtor’ [was] a ‘MSME’ and the promoters [were] not ineligible in terms of Section 29A of the ‘I&B Code’ in clear distinction to the present case, where the Applicant being a promoter/director is undisputedly ineligible and is seeking to overcome the same by exhorting the RP to obtain MSME status.
- In **Hardrock Attachments**²² case is also distinguishable on facts. There too the CD was “an MSME unit, having obtained a MSME certificate”. The issue before NCLT-Kolkata Bench about re-registration during CIRP period of the MSME certificate of the CD that expired before CIRP. It was in that context, and in order to “safeguard” the CD’s assets that the Tribunal ordered RP to re-register the CD as MSME. In the present case, the RP is being asked to apply for MSME status not to safeguard the interests of the CD but to provide an avenue to the suspended promoter/ director to overcome ineligibility placed under section 29A of IBC.

40. Section 60(5)(c), under which the present application has been made though “*very broad in its sweep, in that it speaks about any*

²¹ Saravana Global Holdings Ltd. v. Bafna Pharmaceuticals Ltd., 2019 SCC OnLine NCLAT 962

²² SBI v. Hardrock Attachments (P) Ltd., 2023 SCC OnLine NCLT 595

*question of law or fact*²³ it does not confer on this Authority to bring within its fold any action that is not “*arising out of or in relation to the insolvency resolution*”. Application for obtaining MSME certification for the CD is one such action which is neither arising out of, nor is in relation to the insolvency proceedings.

For the reasons as above, we decline to direct the RP, as desired by the Applicant. The application is therefore dismissed.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

VL

²³ Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308