

**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 11.06.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/384/2024, IA (IBC)/773/2024 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)/384/2024

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

IA (IBC)/773/2024

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

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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

**IA No 384/2024 in
CP (IB) No. 296/7/HDB/2022**

*U/s 60(5) of Insolvency Bankruptcy Code, 2016
read with rule 11 of NCLT Rules, 2016*

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

Between:

1. Mr. Srinivas Kalluri

S/o Mr. K Prabhakar,
No.16-11-16/1/B, Saleem Nagar,
Malakpet, Hyderabad - 500 036,
Telangana.

2. Mrs. Rajani Kalluri,

W/o Mr. Srinivas Kalluri, ,
No.16-11-16/1/B, Saleem Nagar,
Malakpet, Hyderabad - 500 036,
Telangana.

Represented by Mr. Srinivas Kalluri

..... Applicants

AND

Mr. Birendra Kumar Agarwal,

Resolution Professional of
M/s.Manjeera Retail Holding Private Limited
#711, Manjeera Trinity Corporate,
Near Manjeera Mall, JNTU-Hi-tech City Road,
Kukatpally, Hyderabad - Telangana - 500 072.

.....Respondent/Resolution Professional

Date of Order: 11.06.2024

Coram:

Hon'ble Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Hon'ble Sri Sanjay Puri, Hon'ble Member (Technical)

Date of order: 11.06.2024

Counsels:

For Petitioner : Mr.P.Ravi Charan, Counsel

For Respondent : Mr.VVSN.Raju, Counsel

P E R: Rajeev Bharadwaj (Judicial Member)

ORDER

1. The present application has been filed by Mr. Srinivas Kalluri and Mrs.Rajini Kalluri (**hereinafter referred as the Applicants**) seeking to direct the Resolution Professional to confirm whether the obligation to register the Units purchased from the Corporate Debtor is outlined in the Information Memorandum and if the obligation details are not included, alternatively further direct Resolution Professional to amend the Information Memorandum to include the obligation to execute and register the sale deed for their purchased Unit from the Corporate Debtor.

2. **Applicant's Case:**

2.1 On July 18, 2023, Corporate Insolvency Resolution Process (**CIRP**) was initiated against the Corporate Debtor (**CD**) and Mr.Vamsi Khambamettu was appointed as the Interim Resolution Professional (**IRP**). Subsequently, Mr.Birendra Kumar Agarwal was appointed as Resolution Professional (**RP**) vide order dated 14.09.2023.

2.2 The commercial complex, titled Manjeera Mall, has been constructed by the CD. The Applicants entered into an Agreement of Sale (**AoS**) on September 29, 2014 with the CD for the sale of Unit Nos. 26 and 27 on the second floor of "Manjeera Mall," having a total super built-up leasable area of 997 sq. ft. and an undivided area of 20 sq. yds. out of the total area of

Date of order: 11.06.2024

24,587 sq. yds. (5.08 acres) of S2 in Survey No. 1050 situated at Kukatpally village, Balanagar Mandal, Ranga Reddy District. The Applicants have paid a total sale consideration of Rs.75,00,000/- (Seventy-Five Lakhs only) to the CD, which has been duly acknowledged by the CD from time to time.

- 2.3 The entire payments made by the Applicants to the CD are duly recorded in the CD's financial records. Moreover, each payment made for the purpose of acquisition of the referenced property was transacted through legitimate banking channels, with funds sourced from legal earnings after fulfilling tax, levy, duty, and other statutory obligations.
- 2.4 As per clause No. 28 of the AoS, the CD or its nominee/nominated agency holds exclusive leasing rights for 25 years regarding the said Units in "Manjeera Mall". Consequently, the Applicants' Units were leased by the CD, with deductions made for Common Area Maintenance (CAM) charges and annual management fees equivalent to 6% of the annual lease rentals. The CD used to pay the balance lease rentals to the Applicants till the Covid period. The payment of the total sale consideration by the Applicants to the CD, as well as the receipt of annual rentals, is duly recorded in the CD's records.
- 2.5 It is claimed that the CD was responsible for paying the property tax obligations for all units, including those owned by the Applicants. The CD deducted its expenses from the rent payable to the Applicants for their respective units. These deductions for property tax recovery made by the CD were consistently reflected in the accounts. Additionally, the Form-16 issued to the Applicants under the IT Act shows as conclusive proof that

Date of order: 11.06.2024

the units rightfully belong to Applicants, as rent is paid; taxes are deducted and subsequently remitted to the Income Tax Department.

- 2.6 The transfer of title for the said Units in favor of the Applicants has been delayed due to disputes between the Telangana Housing Board (TSHB) and the CD. The registration of the said Units remains pending till date.
- 2.7 However, the CD has put the Applicants in possession of the Units. On 30.01.2024, the Applicants found from the “majeera.com” website that the Respondent has released an investment teaser for the CD, showing the "Manjeera Mall" as one of the projects of the CD. However, it remains unclear whether the Respondent has excluded the Applicants' Unit, as it does not belong to the CD.
- 2.8 Further, if the Respondent includes the Applicants' Units as part of "Manjeera Mall" without adequately making provision of the obligations of prospective resolution applicants to recognize the Applicants' rights, possession and ownership, it would lead to irreparable loss and severe hardship for the Applicants.
- 2.9 The writ petitions Nos. 41884, 42272, and 42308 of 2018 were filed by some affected persons with grievances similar to those of the Applicants before the Hon'ble High Court of Telangana. The Hon'ble High Court vide order dated 18.03.2021 directed the TSHB to register the respective flats. Subsequently, the TSHB appealed this decision before the Hon'ble Division Bench, which vide order dated 01.10.2021, dismissed the appeals. Thereafter, the matter was brought before the Hon'ble Supreme Court, which granted an interim stay on the execution of the sale deed pending further orders. The appeal is currently pending adjudication.

Date of order: 11.06.2024

2.10 The Respondent has uploaded a claim as of 02.02.2024 on the “manjeera.com” website, wherein it is stated that "TSHB has filed its claim with the RP, claiming certain amounts from the CD. The RP has kept TSHB's claim under verification and pending adjudication due to disputes over the claimed amounts, which are presently being adjudicated in W.P. No. 1034 of 2023 and W.P. No. 1057 of 2023 in the Hon'ble High Court of Telangana. These writ petitions are still pending till date, as mentioned by the Respondent in their updated claim uploaded on the “manjeera.com” website.

2.11 The Respondent has already issued Form G dated 21.11.2023, which specified 30.01.2024 as the deadline for submitting Resolution Plans, while as per section 25(2)(g) of the Code, the Respondent is obligated to prepare an Information Memorandum (IM) in accordance with section 29 of the Code.

2.12 It is claimed that the legitimate rights of the Applicants will be affected, if the details of their ownership of the Units are not included in the IM prepared by the Respondent. Prospective Resolution Applicants must be informed of Applicants' right to have the sale deed of the Units registered in their favour. Further, the Applicants firmly believe that the prospective Resolution Applicants are obligated to address the issue of registration in their proposed resolution plans.

3. **Respondent’s Case:**

3.1 Respondent who is the RP of the Corporate Debtor, has contended and contested the averments mentioned in the application.

Date of order: 11.06.2024

- 3.2 It is submitted that that throughout the CIRP period, neither the suspended management of the CD nor the Applicants have disclosed or provided any details regarding the sale of units to the RP. Despite being aware of the initiation of CIRP against the CD, the Applicants failed to inform about their alleged ownership.
- 3.3 Though the suspended management provided documents related to the AoS for other projects/sites of the CD, but prominently omitted to furnish the agreement of sale or any similar documentation regarding the shop/units which is the subject matter of present application.
- 3.4 The purported AoS provided by the Applicants appear to be forged for the following reasons:
- a) The Power of Attorney (POA) granted by APHB to the Corporate Debtor did not authorize it to conduct outright property sales; such authority was solely held by APHB.
 - b) The document has not been registered with the Sub-registrar, as required under the RERA Act.
- 3.5 The Applicants did not communicate or raise the registration issue with the RP before filing of this application. Without seeking clarification from the RP regarding the IM, the Applicants directly approached this Authority. Further, according to the trial balance of the CD provided to the RP, proceeds from unit sales were incorrectly classified as "Advances from Customers" under liabilities, misrepresenting the financial status. As per the Accounting Standards, if the sale of the units had occurred, these should have been recorded as revenue in the CD's books of accounts.
- 3.6 It is claimed that the CD has been consistently bearing the property tax obligations for all shops/offices/units, including the disputed units in

Date of order: 11.06.2024

question. The Applicants have neither covered any costs nor contributed to the payment of property tax, indicating that they are not the owners of the said shops/office units.

3.7 It is claimed that the CD leased the entire commercial space, including the disputed shop/units, through a lease deed executed on 8.10.2022, between Manjeera Retail Holdings Pvt Ltd and Lulu International Shopping Malls Pvt Ltd in Hyderabad. As per the recitals of the Clauses III and IV of the lease agreement, the CD was appointed as the developer with the right to develop and manage the project; including entering into agreements and Schedule II of the lease agreement provides details of the entire commercial building, i.e., the mall cum multiplex, constructed on 2.53 acres of land. Further the Clause 10.1.(a) of lease agreement states about the absolute right of the lessor i.e., TSHB, to develop and manage the demised premises. On examination of recitals of the lease agreement undeniably establishes the fact that the CD owns the entire mall without any encumbrances, charges, claims, or ownership of individual units. Thus, the contention of the Applicants regarding ownership of the units is false and vague.

3.8 Despite being the alleged owners of the units, the Applicants neither made any efforts to claim rental dues, arrears etc. nor filed any claims regarding rental arrears before the RP since the initiation of the CIRP. No rental payments for the said units were made to the Applicants from June 2020 until the commencement of CIRP. Furthermore, the information obtained by the RP shows that the AoS for the units in question was purportedly cancelled by the CD prior to its lease to Lulu International Shopping Malls Private Limited (**Lulu Mall**). However, no documentary evidence has been provided to the RP.

Date of order: 11.06.2024

- 3.9 Even prior to leasing of the mall to Lulu Mall, the CD has made payments to several unit owners for the cancellation of previously sold units. Subsequently on verification of the sale list provided by the suspended management of the CD to the Resolution Professional, it is observed that out of a total of 17 units sold earlier, 10 units were marked as cancelled.
- 3.10 It is submitted that a resolution plan has already been approved by the Committee of Creditors (CoC) and now it is pending before this Authority for approval. Filing of present application to stay CIRP of the CD at this advanced stage clearly shows the malafide intention of the Application.
4. Heard both the Counsels for both the parties and perused the entire records.
5. The Andhra Pradesh Housing Board, now Telangana Housing Board is the owner of the land measuring 6.31 acres in Site S2, Survey No.1050 situated at Kukatpally, Balanagar Mandal, R.R.District and out of this land, land measuring 5.08 acres was given to M/s.Manjeera Retail Holdings Private Limited/CD for its development. As a result of the agreement executed between both the parties, the CD constructed multiplex-cum-mall complex on the said land. Unit Nos.26 and 27 on the second floor of the mall measuring about 997 sq.ft are claimed to have been purchased from the CD by the Applicants vide Agreement of Sale dated 08.10.2013 for a consideration of Rs.75 lakhs, out of which Rs.5 lakhs were paid vide cheque dated 02.08.2013 and remaining Rs.70 lakhs was to be paid within 21 days of entering into the agreement.
6. The Respondent has denied that any such agreement was executed between the CD and the Applicants, but the facts on record show otherwise. The CD has admitted about the receipt of Rs.71,50,000/- in the trial balance

Date of order: 11.06.2024

report as 'Advances from the Customers'. In addition to the receipt of the entire sale consideration, the CD was also paying the rent to the Applicants as per the terms & conditions of the agreement dated 08.10.2013 and the relevant clauses are 12 and 28, which are reproduced below:

"12. The DEVELOPER had already entered into a Letter of Intent with M/s.Premier Data Products (Franchisee Partner for Canon Image Square outlet) vide Letter dated 17.09.2012 (a copy of which is annexed to this Agreement for leasing out the Scheduled Property on the various terms and conditions mentioned therein. The DEVELOPER undertakes to transfer the said Letter of Intent to the PURCHASERS on payment of the entire sale consideration mentioned under Clause No.1 above. The Developer agrees to pay a monthly rent of Rs.1,39,580/- (Rupees one lakh thirty nine thousand five hundred and eighty only) after a two months from the date of payment of total sale consideration by the PURCHASERS to the Developer subject to deduction of TDS, only upto the actual rent commencement by the Lessee and from this date the Lessee M/s.Premier Data Products will make payment of the rent to the PURCHASERS.

"28. The DEVELOPER or its nominee/nominated agency have exclusive Leasing Rights for a period of 25 years with respect to the Units in the Manjeera Trinity Mall and that the PURCHASERS are bound by and shall adhere to the same. However, the PURCHASERS may solicit tenants for his/her/their respective Unit/s upon obtaining prior approval from the DEVELOPER, which approval is necessary to ensure the zoning and brand positioning in the Manjeera Trinity Mall.

7. Therefore, the developer, i.e., CD was given the right to lease the units purchased by the Applicants for a period of 25 years and vide the same document this property was given on lease to M/s.Premier Data Products. In lieu of the lease granted to M/s.Premier Data Products, the Applicants were regularly receiving rent from the CD after deduction of property tax and this is clear from Annexure II (Page Nos.93-99 of the Rejoinder). The

Date of order: 11.06.2024

CD has also supplied Form 16A dated 23.12.2017 to the Applicant No.1 recording the CD as the deductor and Applicant No.1 as the deductee of the tax. The Respondent is denying the execution of the agreement dated 08.10.2013, but the facts speak for themselves that Unit Nos. 26 and 27 were agreed to be sold to the Applicants.

8. The sale deed of Unit Nos. 26 and 27 could not be registered because of dispute between the owner of the land, i.e., Telangana Housing Board and the CD. In this regard, some of the persons facing similar issues approached the Hon'ble High Court of Telangana by filing Writ Petition No.1034 of 2023 and the single Bench vide order dated 10.01.2023 directed that the Telangana Housing Board shall not take coercive steps about the payment of upfront amount as a pre-condition to enter into supplementary development agreement. Now this matter is pending before the Hon'ble Apex Court.
9. Thus, it is clear that due to the prevailing dispute between the Telangana Housing Board and the Corporate Debtor, the sale deed in favour of the Applicants could not be executed and registered and in the meantime, the CIRP was initiated against the CD vide order dated 18.07.2023. Prior to this, the CD leased the entire commercial mall constructed over the land measuring 5.08 acres, which includes Unit Nos.26 and 27 purchased by the Applicants to M/s.Lulu International Shopping Malls Private Limited, for a period of 20 years vide agreement dated 08.10.2022. In the said agreement, there is no reference of earlier agreement dated 08.10.2013.
10. Notwithstanding the lease agreement executed by the CD with M/s.Lulu International Shopping Malls Private Limited, the CD had liability towards the Applicants. Had the sale deed been executed at the time when the

Date of order: 11.06.2024

entire sale consideration was paid by the Applicants, Unit Nos.26 and 27 would not have become part of the property of the CD. In its absence, the Applicants have a claim against the CD.

11. After the initiation of the CIRP, the resolution professional was to collect information about the assets, liabilities, debts, pending litigation, disputes etc., of the Corporate Debtor and for this information memorandum is to be prepared. Section 5(10) of the IBC says that information memorandum is to be prepared by the RP under Section 29(1). The collection of such information helps in decision making by the RP/CoC. When the record of the CD clearly reflects such liability, the RP is not supposed to act only when the claim is filed by the Applicants. Hon'ble NCLAT in ***Kushal Ltd. versus Kartik Baldwa and ors Comp. App. (AT) (Ins.) No. 678 of 2022, decided on 21.07.2022*** emphasized the importance of information memorandum while interpreting section 29 of IBC in the following words:

53. In the explanation annexed to Section 29, the word 'relevant information' is explained. It means the information required by the resolution applicant to make the resolution plan for the Corporate Debtor which shall include financial position of the Corporate Debtor. All information relating to dispute against the Corporate Debtor on any other matter pertaining to the Corporate Debtor as may be specified. Therefore, the word 'relevant information' referred in Section 29 (1) of IBC is only an information required by the resolution applicant i.e. appellants herein to make resolution plan for the Corporate Debtor. Here, the Resolution Professional disclosed the information based on the report of MITCON available and he is not an expert to make an assessment of the production capacity of the industry, therefore, he only disclosed those details regarding production capacity based on earlier report submitted by MITCON, such information is relevant for the purpose of making a resolution plan for the Corporate Debtor by the Resolution Applicant.

54. Thus, the Resolution Professional disclosed relevant information enabling the resolution applicants/appellants to make appropriate application by submitting resolution plan for the Corporate Debtor. Such act would not amount to fraudulent misrepresentation.

Date of order: 11.06.2024

12. Thus, the Resolution Professional must collect relevant information which may affect the decision making of the prospective resolution applicants or other stakeholders. Discharge the liability of the Corporate Debtor towards the Applicants is definitely relevant information and therefore the RP was supposed make it part of the information memorandum.
13. In the light of the observations and discussions, we find that the information about the liabilities, debts, delegation etc., of the CD is to be included in the information memorandum so that every stakeholder may have proper appreciation of the financial strength of the CD. Therefore, the Respondent is directed to include the liabilities of the CD towards the Applicants in information memorandum and if it is already included, the Applicants be informed within 7 days from passing of the order.
14. As a result of the above facts and circumstances, this **IA No.384 of 2024 in CP (IB) No.296/7/HDB/2022** is allowed.

Sd/-
(Sanjay Puri)
Member(Technical)

Sd/-
(Rajeev Bhardwaj)
Member(Judicial)

Vinod

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**IA No 773/2024 in
CP (IB) No. 296/7/HDB/2022**

*Section 60(5) of Insolvency Bankruptcy Code,
2016, read with rule 11 of NCLT Rules, 2016*

IN THE MATTER OF:

M/s.Catalyst Trusteeship Limited

...Financial Creditor

And

M/s.Manjeera Retail Holdings Private Limited

...Corporate Debtor

Between:

M/s Vasavi Realty Private Limited
Vasavi Corporate, H.No. 8-2-703-7-1 and
8-2-703-7-1A, 4th Floor, Road No 12,
Banjara Hills, Hyderabad- 500034, Telangana.

..... Applicant

AND

Mr. Birendra Kumar Agarwal,
Resolution Professional of M/s. Manjeera Retail Holding Private Limited
#913, Corporate Annex, Sonawala Road, Near Udyog Bhavan,
Goregaon (East), Mumbai – 400063, Maharashtra.

.....Respondent No.1 /Resolution Professional

Committee of Creditors
of M/s. Manjeera Retail Holdings Private Limited
#913, Corporate Annex, Sonawala Road, Near Udyog Bhavan,
Goregaon (East), Mumbai – 400063, Maharashtra.

.....Respondent No.2 /Committee of Creditors

Date of Order: 11.06.2024

Coram:

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

Date of order: 11.06.2024

Counsels:

For Petitioner : Mr. Amir Bavani, Counsel
For Respondent No.1 : Mr. S. Ravi, Senior Counsel,
Mr. VVSN Raju Counsel & Ms. Meghana Counsel.
For Respondent No.2 : Mr. Palash Taing, Counsel.

PER: Rajeev Bharadwaj (Judicial Member)

1. The present application has been filed by M/s Vasavi Realty Private Limited (“**Applicant/ Unsuccessful Resolution Applicant**”) praying following reliefs:
 - a. Set aside the voting process and resolutions passed by the Committee of Creditors (“**Respondent No.2/ CoC**”) in the 10th CoC meeting, wherein the Resolution Plan of the Applicant was rejected and one Resolution Applicant was approved;
 - b. Set aside and/or quash voting results in the 10th CoC meeting;
 - c. Send back the matter to the CoC for reconsideration and fresh voting on the Resolution Plans after giving adequate opportunities to the Applicant to clarify, and if required to negotiate and revise its plan;
 - d. Pass appropriate orders and directions upon Respondents to adopt Swiss challenge method for approval of the Resolution Plan as indicated under Request for Resolution Plan (“**RFRP**”); and other reliefs.
2. This Authority vide orders dated 18thJuly, 2023 admitted the Corporate Insolvency Resolution Process (“**CIRP**”) of Manjeera Retail Holdings Private Limited (“**CD**”) and appointed Sri. Vamshi Kambhammettu as IRP, Later Mr. Birendra Kumar Agarwal was appointed as Resolution Professional (“**RP/Respondent No.1**”).
3. **Case of the Applicant:**
 - a) Respondent No. 1 published the first Form-G on 22.09.2023, setting the Expression of Interest (“**EOI**”) submission deadline as 22.10.2023. Thereafter Form-G was revised multiple times and was published on

Date of order: 11.06.2024

30.10.2023 and 21.11.2023 with the last date of submission of EOI as 14.11.2023 and 06.12.2023, respectively.

- b) The Applicant submitted its EOI on 21.10.2023 and deposited Rupees One Crore as refundable Earnest Money Deposit (“**EMD**”) on 02.02.2024. The Applicant was included in the final list of Prospective Resolution Applicants (“**PRAs**”) on 08.12.2023. Respondent No. 1 provided the RFRP dated 03.01.2024 to the Applicant on 04.01.2024, and then the initial Resolution Plan was submitted on 04.02.2024.
- c) The Applicant attended CoC meetings on 13.02.2024 and 04.03.2024 to discuss the Resolution Plan and subsequently submitted its latest revised plan on 18.03.2024.
- d) The Applicant vide an email dated 23.03.2024 to Respondent No.1 showed its willingness to enhance its plan and requested to provide the date and mechanism for conducting negotiations based on the submitted Resolution Plans. Thereafter, subsequent emails were sent on 26.03.2024 and 27.03.2024 by the Applicant demonstrating its willingness for further negotiations to enhance the Resolution Plan.
- e) Respondent No. 1 vide email dated 28.03.2024 informed that the CoC has not approved the Resolution Plan submitted by the Applicant with the requisite majority in the 10th meeting of the CoC and stated that the EMD will be refunded soon. Thereafter, Respondent No. 1 on 29.03.2024 requested for the bank details of the Applicant to refund the EMD.
- f) However, the Applicant vide an email dated 29.03.2024 expressed its unhappiness to the Respondent No.1, on the selection of Successful Resolution Applicant without conducting negotiations with the Applicant as requested on several times and thereby, the Applicant

Date of order: 11.06.2024

denied to share the Bank details for the refund of EMD with Respondent No. 1.

- g) It is claimed that Respondent Nos. 1 and 2 turned a blind eye towards several requests made by the Applicant in conducting negotiations with the Applicant and has acted arbitrarily.
- h) It is averred that the act of CoC unanimously disapproving the Resolution Plan submitted by the Applicant without putting forward any evaluation scores as per the evaluation matrix, as specifically stated in Annexure 13 of the RFRP, bears a smell of strong foul play.
- i) It is further averred that the RFRP specifically suggested for a Swiss Challenge Method for approval of Resolution Plan, which the Respondents failed to follow and the CoC irrationally approved one Resolution Plan. It is claimed that by not adopting Swiss Challenge Method the Applicant was deprived to improvise on the plan, which clearly is against the commercial wisdom of the CoC and strictly violative of basic principle of value maximisation.
- j) The Applicant has also relied on the judgements of Hon'ble Supreme Court in the matters of *M.K. Rajagopalan v. Dr. Periasamy Palani Gounder and Anr. 12023 SCC Online SC 574* and *Swiss Ribbons Private Limited & Anr. v. Union of India [(2019) 4 SCC 171]* to support its contention.

4. **Case of Respondent No 1:**

- a) It is submitted that the Applicant has no locus standi to challenge any of the decisions of the CoC as the Applicant being an unsuccessful Resolution Applicant does not fall within the category of the Stakeholders of the Corporate Debtor and its interest is to delay the

Date of order: 11.06.2024

CIRP. The purpose is only to enable the Applicant to have Stakeholders entry for consideration of the Resolution Plan.

- b) It is a settled position of law that the unsuccessful Resolution Applicant has got no locus stand to challenge the voting process and resolutions passed by the CoC in its commercial wisdom as the Applicant is neither the member of the CoC nor is the Financial Creditor of the Corporate Debtor. The Applicant's Resolution Plan was duly considered and examined by the CoC and was rejected by the CoC in its commercial wisdom along with the 7 other Resolution Plans and approved the Resolution Plan of M/s Lulu International Shopping Malls Pvt Ltd.
- c) It is claimed that in view of settled position of law and in absence of any specific right to the Unsuccessful Resolution Applicant to challenge the scores granted as per the evaluation matrix prepared by the CoC and the Resolution Professional, the question of setting aside or quashing voting results of the 10th CoC meeting does not arise.
- d) In the 11th CoC meeting held on 28.03.2024, various emails of the Applicant were brought to the notice of the CoC and one of the CoC members, namely, Catalysts Trusteeship Limited (92.65% voting shares) has stated that CoC has already done multiple negotiations/discussions with all the Resolution Applicants including the Applicant.
- e) The Catalyst Trusteeship Limited has further stated that the email of Applicant is a delayed effort because all the resolution plans have already been discussed in detail, evaluated as per the evaluation matrix, and examined for feasibility and that once the Resolution Plan, as approved by CoC has been placed before the Adjudicating Authority, the same cannot be returned to the CoC unless the approved resolution plan is in contravention of Section 30(2) of the I & B Code, 2016.

Date of order: 11.06.2024

- f) It is submitted that the Applicant has failed to point out contravention of any provision of law by the CoC in approving the Resolution Plan and it is not the case of the Applicant that they are challenging the RFRP.
- g) From a plain reading of clause 9 of the RFRP, it can be seen that the RP and the CoC reserve the absolute right to use Swiss Challenge or any other method to compare and improve the Resolution Plan and the Applicant does not derive any right for Swiss Challenge Method.
- h) The members of the CoC have also discussed amongst themselves that 'swiss challenge process' is not mandatory. Further, the COC with 100% voting share in its commercial wisdom has decided not to entertain the unsolicited request from Vasavi Realty Private Limited.
- i) Reliance was placed on various judgements of Hon'ble Supreme Court and NCLAT in the matters of *K. Shashidhar v. Indian Overseas Bank and Others (2019) 12 SCC 150*; *Committee of Creditors, Essar Steel India Limited v. Satish Kumar Gupta and Ors. (2020) 8 SCC 531*, *Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others (2020) 11 SCC 467*, *M K Rajagopalan v. Rajendran Shanmugam, Resolution Professional Vasani Healthcare Pvt. Ltd & Anr, IA No. 215 of 2023 in Company Appeal (AT) (CH) (INS) No. 58 of 2023, PNC Infratech Ltd. v. Deepak Maini (2022) ibclaw.in 612*.

5. **Case of Respondent No 2:**

- a) It is submitted that if the reliefs sought by Applicant are granted, the same shall derail the entire resolution process and will be in complete contravention of the objectives of "time-bound resolution" enshrined under the Insolvency and Bankruptcy Code, 2016.
- b) It is claimed that Respondent No.1 received 8 resolution plans by 04.03.2024. All the PRAs including the Applicant were given ample

Date of order: 11.06.2024

opportunity to revise their plans. The revised plans were then presented in the 10th COC meeting for voting on 22.03.2024. However, the Applicant submitted an enhanced plan on 23.03.2024, after the deadline for revised submissions and subsequent to the CoC's approval to Resolution Plan of SRA. In the 11th COC meeting, the COC unanimously rejected the Applicant's request, considering it as unfair to other PRAs and the SRA, to entertain a late proposal.

- c) It is submitted that the resolution plans were voted on and approved by the CoC, following a commercially accepted and legally sound process. It is claimed that Respondent No.2 had full discretion in determining a method for comparing and improving a Resolution Plan for maximizing CD's value. The COC's process was transparent and as per the commercially accepted practices in accordance with terms of the IBC and CIRP Regulations. Further, the COC was not obligated to disclose evaluation matrix scores or follow the "Swiss Challenge Method".
 - d) The approval of Lulu International's Resolution Plan and the rejection of the Applicant's request are matters of the commercial wisdom of the CoC. These decisions should not be interfered with unless they contravene the provisions of the IBC and CIRP Regulations.
 - e) In support of their contentions, Respondent No. 2 has placed reliance on the Judgment of Hon'ble Supreme Court in the matter of *Committee of Creditor of Essar Steel India Ltd. vs. Satish Kumar Gupta: (2020) 8 SCC 531*.
6. Heard both the counsels for both the parties and perused the records.
7. The Applicant has built up a case for reconsideration of its Resolution Plan as the Swiss Challenge Method was not resorted to by the CoC and further

Date of order: 11.06.2024

because of faulty voting process, voting results and passing of resolution plan by the CoC in the 10th CoC meeting held on 22.03.2024.

8. From the perusal of the 10th CoC meeting held on 22.03.2024, it is clear that the CoC has discussed various Resolution Plans submitted by the Prospective Resolution Applicants and resolved to **disapprove** the Resolution Plan of the Applicant and **approve** the Resolution Plan submitted by Lulu International Shopping Malls Private Limited. The relevant part of the minutes of the 10th CoC meeting is extracted below:

*“RESOLVED THAT pursuant to sub-section (4) of Section 30 of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors (CoC) of Manjeera Retail Holdings Private Limited (“MRHPL”) after assessing the (a) feasibility and viability of the resolution plan submitted in the corporate insolvency resolution process of MRHPL (b) provisions for its effective implementation, (c) criteria as per Evaluation Matrix and (d) other requirements of applicable CIRP regulations, hereby accords its **disapproval** to the resolution plan dated 18/03/2024 (Resolution Plan) read with the annexures submitted by **Vasavi Realty Private Limited**”*

*“RESOLVED THAT pursuant to sub-section (4) of Section 30 of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors (CoC) of Manjeera Retail Holdings Private Limited (“MRHPL”) after assessing the (a) feasibility and viability of the resolution plan submitted in the corporate insolvency resolution process of MRHPL (b) provisions for its effective implementation, (c) criteria as per Evaluation Matrix and (d) other requirements of applicable CIRP regulations, hereby accords its **approval** to the resolution plan dated 18/03/2024 (Resolution Plan) read with the annexures submitted by **Lulu International Shopping Malls Pvt Ltd**”*

9. Thus, rejection of resolution plan of the Applicant on the face of the 10th CoC meeting cannot be actuated of any motive. It is also pertinent to note that all the requests made by the Applicant after the approval of the Resolution Plan were discussed in the 11th CoC meeting held on 28.03.2024 and the CoC decided that the Resolution Plan submitted by the Applicant was examined and evaluated in detail.

Date of order: 11.06.2024

10. About not following Swiss Challenge Method for selecting the successful resolution plan and non-disclosure of the evaluation scores as per the evaluation matrix, it is RFRP which clinches whole issue. The relevant clauses of the RFRP are extracted below:

9. RIGHT TO DISQUALIFY AND ACCEPT OR REJECT THE RESOLUTION PLANS

Notwithstanding anything contained in this Process Note, the Resolution Professional and the Committee of Creditors reserve the absolute right to:

- i. disqualify any Resolution Applicant that is found to have made a false disclosure at any time during the Resolution Plan Process or made any misrepresentation with regard to its eligibility to participate in the process or submit Resolution Plan at any stage of the Resolution Plan Process or breaches any term of the Confidentiality Undertaking or this Process Note;*
- ii. accept any Resolution Plan with or without modification;*
- iii. **reject any Resolution Plan;***
- iv. call upon the Resolution Applicant to submit a revised Resolution Plan;*
- v. **use swiss challenge or any other challenge method to compare and improve the Resolution Plan;***
- vi. annul the Resolution Plan Process and reject all the Resolution Plans if considered unsatisfactory by the COC in its sole discretion and seek fresh submission of the Resolution Plans; and/or*
- vii. Select or approve any proposal or Resolution Plan, as it may deem fit, at any time, without any liability or any obligation for such acceptances rejection or annulment, and without assigning any reasons for such actions save and except as provided for in the Applicable Law."*

7. EXAMINATION AND EVALUATION OF RESOLUTION PLAN

.....
.....

*The Resolution Professional/ Committee of Creditors shall also have the right to disclose the scores of any Resolution Applicant (basis Evaluation Matrix) to other Resolution Applicant, if required pursuant to any process of negotiation adopted by them including any challenge mechanism. **Provided however that the Resolution Professional or the Committee of Creditors shall not be bound to disclose the scores of any Resolution Applicant or disclose the methodology adopted in arriving at such scores. It is further clarified that the Resolution.***

Date of order: 11.06.2024

Applicant shall not have the right to request clarifications on the scoring made as per the Evaluation Matrix or seek information as regards the methodology adopted for scoring of its Resolution Plan."

.....

11. Upon a bare reading of the aforementioned clauses 9 and 7 of the RFRP, it is evident that the CoC retains the right to employ any alternative challenge method instead of the Swiss Challenge Method, as stipulated in clause 9(v) of the RFRP.
12. Regulation 39(1A) (b) of the IBBI CIRP Regulations 2016 provides that a Resolution Professional **may**, if envisaged in the RFRP use any challenge mechanism to enable resolution applicants to improve their plans. This Regulation is directory in nature and does not mandate the CoC or the RP to follow a particular challenge mechanism i.e., Swiss Challenge Mechanism. Regulation 39(1A) (b) is extracted below:

39. Approval of resolution plan.

.....

(1A) The resolution professional may, if envisaged in the request for resolution plan-

(a) allow modification of the resolution plan received under sub-regulation (1), but not more than once; or

(b) use a challenge mechanism to enable resolution applicants to improve their plans.

13. The judgements of Hon'ble Supreme Court in the cases of ***MK Rajagopalan (Supra)*** and ***Swiss Ribbons (Supra)*** relied by the Applicant do not come to their rescue as they are clearly distinguishable with the present case and its facts. The Hon'ble Supreme Court in the case of ***MK Rajagopalan*** case supra dealt with CoC acting in contravention to the provisions of IBC which is not under challenge in the present case. To put it otherwise, the IBC has left it to the discretion of the Resolution Professional to explore the best possible method for selling the assets of

Date of order: 11.06.2024

the Corporate Debtor. Here we may refer to the decision in ***R.K. Industries (UNIT-II) LLP v. H.R. Commercials Private Limited and Ors. (2024)4 SCC 166***

14. The Applicant was given equal opportunity and the CoC has duly considered the Resolution Plan submitted by the Applicant and it is up to the CoC to decide which Resolution Plan is to be approved amongst the submitted Plans. The limited scope that we have is to ensure that all the information was placed before the CoC by the Resolution Professional to enable them to take the sound commercial decision, and the and CoC followed the procedure laid down in Regulation 39 (3) of the CIRP Regulations while selecting the Successful Resolution Applicant.
15. The commercial wisdom of the CoC has been held to be supreme in ***K. Sashidhar versus Indian Overseas Bank, (2019) 12 SCC 150, Committee of Creditors of Essar Steel India Ltd. versus Satish Kumar Gupta (2020) 8 SCC 531 and Ebix Singapore (P) Ltd. versus Committee of Creditors of Educomp Solutions Limited, (2022) 2 SCC 401*** and the Apex Court went on to hold that the Adjudicating Authority under Section 31(2) of IBC can only examine the validity of the Resolution Plan under Section 30(2) of the Code and then either approve or reject the Resolution Plan but cannot compel the CoC to negotiate further and also that the Adjudicating Authority is duty bound to ensure the completion of CIRP within the prescribed timeline of 330 days under the Code.
16. The unsuccessful Resolution Applicant also does not have any locus standi to challenge the Resolution Plan approved by the CoC in its commercial wisdom and that once a Resolution Plan is approved by the CoC it is presumed that the approval was given to a viable and feasible plan and this

Date of order: 11.06.2024

Authority cannot interfere with the commercial wisdom. Reliance is placed on the judgement of Hon'ble NCLAT in the case of ***Rajesh Kumar & Ors. v. Rabindra Kumar Mintri & Anr., C.A. (AT)(INS) No. 1489 of 2022.***

17. The CoC and the RP followed the due procedure laid down by IBC and we could not find any act of the CoC or the RP in contravention to the provisions of IBC, thus we find no reason to interfere with the decision taken by the CoC in rejecting the Resolution Plan of the Applicant and approving the Resolution Plan which is feasible according to the commercial wisdom of CoC
18. Apart from the Application lacking merit, the Applicant has also no Locus Standi to challenge the resolution Plan which has already been approved by the CoC.
19. Therefore, the present application is liable to be dismissed.

Sd/-

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

Sd/-

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