



Sl.No. 1

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 16.10.2024 AT 01:00 P.M.

TC/CP. Nos.	IBC Stage	Present stage of the case	Section/Rule	Name of Parties
CP(IB)/165/9/AMR/2019	Liquidation plan submitted	Resolution Plan Approved on 18.11.2022	7 of IBC	Jayasiddhi Ganesh Enterprises Pvt Ltd Vs Macro Cast Pvt Ltd
	IA(IBC)(Liq)/3/2024	For Orders	U/s 33(3) of I & B Code, 2016 R/w Sec.60(5) of the Code	Mr. Kammula Prabhakar Rao, RP of M/s. Makro Cast Pvt Ltd
	IA(IBC)/357/2024 in IA(IBC) (LIQ)/3/2024	For hearing	U/s 60(5) of the IBC Code, 2016 R/w NCLT Rules 2016	Pennar Industries Ltd vs. Mr.Kammula Prabhakar Rao RP of Makro Cast Pvt Ltd
	IA(IBC)/358/2024 in IA(IBC) (LIQ)/3/2024	For hearing	U/s 60(5) of the IBC Code, 2016 R/w NCLT Rules 2016	Pennar Industries Ltd vs. Mr.Kammula Prabhakar Rao RP of Makro Cast Pvt Ltd
	IA(IBC)/317/2024	For hearing	U/s 60(5) of IBC, 2016	Pennar Industries Ltd vs. Mr.Kammula Prabhakar Rao RP, of Makro Cast Pvt Ltd & Union Bank of India

ORDER

IA(IBC)(Liq)/3/2024:

Present: Mr. Akash Mallikarjun, Proxy Counsel for the Applicant.

Orders pronounced. IA (IBC) (Liq)/3/2024 is allowed and recorded vide separate sheets.

IA(IBC)/357/2024 in IA(IBC) (LIO)/3/2024:

Present: Mr.K. Siddharth Rao, Ld. Counsel for the Applicant.

Proof of Service filed. Mr.Akash Mallikarjun, Advocate, takes notice on behalf the Respondent and seeks time to file vakalath and counter. For filing vakalath and counter, list the matter on 09.12.2024.

IA(IBC)/358/2024 in IA(IBC) (LIO)/3/2024:

Present: Mr.K. Siddharth Rao, Ld. Counsel for the Applicant.

Proof of service not filed. Mr.Akash Mallikarjun, Advocate, takes notice on behalf the Respondent and seeks time to file vakalath and counter. For filing vakalath and counter, list the matter on 09.12.2024.

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Sl.No.1

IA(IBC)/317/2024:

Present: Mr.K. Siddharth Rao, Ld. Counsel for the Applicant.

Mr.Akash Mallikarjun, Proxy Counsel for the RP

Vakalat and counter not filed. At the request of Proxy Counsel for the Respondent, for filing vakalat and counter, list the matter on 09.12.2024.

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**SANJAY PURI
MEMBER(TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

IA (IBC) (LIQ.)/3/2024

in

CP (IB)/165/9/AMR/2019

[under Section 33 (3) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016]

In the matter of

M/s. MAKRO CAST PRIVATE LIMITED

CA Kammula Prabhakar Rao,
Resolution professional of M/s. Makro Cast Private Limited,
Reg. No: IBBI/IPA-001/IP-P-01467/2018-2019/12339.
Address: 39-4-1, S5, Koduru Enclave, Pitchaiah Street,
Labbipet, Vijayawada, Krishna, Andhra Pradesh – 520010.
Email Id: kammulaprabhakar@hotmail.com.

...Applicant/Resolution Professional

Date of Order: 16.10.2024

CORAM:

SRI RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SRI SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels Appearance:

For Applicant : CA Kammula Prabhakar Rao, RP.

[PER: BENCH]

ORDER

1. This is an Application filed by Mr. CA Kammula Prabhakar Rao, Resolution Professional (RP) of M/s. Makro Cast Private Limited (CD)], under Section 33 (3) of the Insolvency and Bankruptcy Code, 2016 (IBC), seeking to initiate Liquidation Process of the CD.

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Brief facts of the Application:

2. This Tribunal, vide order dated 13.12.2019 admitted the CD into Corporate Insolvency Resolution Process (“CIRP”) and appointed the Applicant herein as the Interim Resolution Professional (“IRP”). IRP issued Public Announcement in FORM-A on 19.12.2019 in Financial Express, English Daily News Paper and Prajasakthi, Telugu Daily News Paper.
3. Pursuant to the Public Announcement, IRP received below claims:

S.No.	Name of the Creditor	No. of Claims Received	Aggregate Amount of Claims received (Rs.)
1.	Financial Creditor	1	84,04,04,755
2.	Operational Creditors	35	14,38,08,709
3.	Employees	1	3,89,15,653
4.	Related parties	30	9,01,34,933
5.	GST Department	1	4,78,28,884
		68	116,10,92,934

4. The IRP constituted Committee of Creditors (“CoC”) u/sec. 21(1) of the Code read with Regulation 17 of the CIRP Regulations, with Union Bank of India, ARB, Vishakapatnam, as sole CoC member and submitted report certifying Constitution of Committee before this Tribunal. Later, IRP conducted 1st Meeting on 17.01.2020 and the Applicant was confirmed as Resolution Professional (“RP”) and the same was communicated to this Tribunal.

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5. Further, Information Memorandum was compiled by the RP and submitted to the CoC on 07.03.2020. 2 sets of Registered Valuers were appointed to value Fixed Assets (Land & Buildings and Plant & Machinery) of CD and Valuation Reports were obtained by RP.
6. Public announcement for Expression of Interest (“EOI”) was published on 02.03.2020 in Financial Express and Prajasakthi Newspapers. Pursuant to public announcement for EOI, Seven (7) parties expresses their interest to participate in resolution process of the CD.
7. The RP submitted ‘Information Memorandum’ and ‘Request for Resolution Plan’ to the Prospective Resolution Applicants (“PRAs”) and out of seven (7) PRAs only one Resolution Applicant (“RA”) “M/s. Pennar Industries Limited” submitted their Resolution Plan on 14.12.2020 with a Resolution Plan amount of Rs.17,19,47,971/- and the same was placed before the CoC, for its review and approval in 7th CoC meeting.
8. The CoC, after its review, resolved to request the RA to come up with a better resolution plan amount. The RP made an appeal to the RA for considered an improved resolution plan amount and the RA submitted a revised resolution plan amount to supplement the Resolution Plan and the same was presented before the CoC, for its review and approval in the 8th CoC meeting. The CoC reviewed the Revised Resolution Plan and resolved to reject the resolution plan as the plan amount offered is not satisfactory and the same was communicated to the RA.
9. The CoC in its 9th meeting held on 28.05.2021 concluded that there is no possibility of revival of CD and with 100% voting rights resolved to liquidate the CD and requested the RP to file an application.

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10. Further, IA/68/2021 was filed by the Applicant before this Tribunal seeking to liquidate the CD and the matter reserved for orders on 01.07.2021 and no liquidation order was pronounced. Later, the RA filed IA/27/2022 before this Tribunal seeking reconstitution of the CoC of the CD and to stay the proceedings in IA/68/2021 and this Tribunal, vide order dated 06.04.2022 in IA/27/2022 allowed the RP to submit a revised resolution plan and directed the RP to re-constitute the CoC for reviewing the resolution plan. Pursuant to the order of this Tribunal, the RA submitted a revised Resolution Plan on 19.04.2022.
11. The CoC was reconstituted and the revised Resolution Plan was reviewed by the CoC in a series of meetings held i.e. 14th, 15th and 16th CoC meetings held on 28.04.2022, 23.05.2022 and 29.06.2022 respectively. The CoC accorded its approval for the Resolution Plan through e-voting on 04.01.2022. Pursuant to approval of Revised Resolution Plan, RP issued a Letter of Intent to RA on 13.10.2022 and it was accepted by RA on 17.10.2022 and submitted a performance bank guarantee for Rs. 50 Lakhs. IA/320/2022 was filed by the RP before this Tribunal for approval of the resolution plan and vide its order dated 18.11.2022 this Tribunal approved the plan.
12. The RP communicated the said order on 20.11.2022 to the CoC, successful resolution applicant (SRA) and Mr. MVL Narayana, director on the suspended board. In the said email, the RP asked the CoC and the SRA to authorize a representative from their respective end to be part of the Monitoring Committee (MC), as directed by this Tribunal. However, the authorised representatives were not appointed to the MC by the CoC and the SRA.

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13. Further, the RP conducted a CoC meeting on 09.12.2022 to initiate steps for implementation of resolution plan. In the said meeting, the CoC asked RP to follow up with the SRA for:
 - a) Appointment of authorised representative to the MC; and
 - b) Payment of Rs. 6.12 Crores by 18.12.2022, towards discharge of claims, as stated in the Resolution Plan (i.e., within 30 days from the date of approval of the Resolution Plan 18.12.2022 by this Tribunal).
14. Towards the implementation of resolution plan, the RP requested the SRA, vide email dated 15.12.2022 to pay the upfront amount and authorise a representative to the MC. The SRA replied, vide email dated 17.12.2022 stating that few IAs were pending before this Tribunal and Hon'ble NCLAT, Chennai Bench (filed by the suspended board of CD, challenging the admission of CIRP and approval of the Resolution Plan) and that they will be able to move further on implementation of resolution plan only after these IAs were resolved.
15. The SRA did not come forward to implement the resolution plan, since then and on 15.07.2024, the SRA finally informed the RP that despite the pending cases, the SRA is now willing to implement the resolution plan as the plant & machinery of the CD will further deteriorate if it is not put to use. The RP communicated the same to the CoC and a CoC meeting was called upon to review the status and validity of the resolution plan. CoC meeting was conducted on 25.07.2024, wherein it was stated that the SRA failed to implement the Resolution plan, as per the terms approved by this Tribunal and the implementation of the plan should not be kept hold, on the ground

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that IAs are pending before NCLT/NCLAT and there is no stay order on implementation of the plan.

16. The CoC further stated that the timeline for implementation of resolution plan has already lapsed i.e. 18.12.2023 and that substantial time has elapsed and resolved to approach this Tribunal to liquidate the CD, as the resolution plan was not implemented in total and asked the RP to file an application for liquidation. An e-voting was conducted and the CoC unanimously resolved to make an application to this Tribunal to liquidate the CD. In the said meeting, the RP stated that he is not willing to act as a Liquidator, owing to his professional and personal pre-occupancies.
17. Therefore, for the reasons stated above, RP seeking this Tribunal for initiating liquidation proceedings against the Corporate Debtor after setting aside the order dated 18.11.2022 passed in IA/320/2022 approving the resolution plan.
18. We have heard the Learned Resolution Professional and perused the records.
19. In this case, the resolution plan was approved by the CoC and further, the plan was approved by this Tribunal vide its order dated 18.11.2022 passed in IA/320/2022. It is also evident that the Successful Resolution Applicant was granted sufficient time to implement the resolution plan and it has failed to implement the same as per the terms mentioned in the approved Resolution Plan. Further, the CoC in its meeting held on 25.07.2024 with 100% voting resolved that:

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"Item No.4: Application for Liquidation.

After reviewing the above, the COC stated that Pennar Industries Ltd., failed to implement the resolution plan, as per the terms approved by Hon'ble NCLT Amaravati. The implementation of resolution plan should not be stopped on the ground that IAs are pending before NCLT/NCLAT and also that there is no stay order on implementation of resolution.

The COC further stated that as the time line for implementation of resolution plan has already lapsed (i.e., 18-Dec-2023) and that the substantial time has elapsed since then, the COC decided to approach Hon'ble NCLT Amaravati for making an application for liquidation of the corporate debtor, as the resolution plan was not implemented in total and asked the Resolution Professional to file an application for liquidation.

Item No.5: Appointment of Liquidator.

The COC asked the Resolution Professional if he would be willing to act as liquidator of the corporate debtor.

The Resolution Professional stated that he is not willing to act as liquidator, due to his pre occupancies and personal works."

20. Taking into consideration the facts and circumstances of the present case and further that the SRA has failed to comply with the terms and conditions of the resolution plan and despite ample time having been afforded, has failed to make the payment, this Authority is left with no option, but to order the liquidation of the Corporate Debtor, as prayed for in the application.
21. The Hon'ble Supreme Court in the matter of *K. Sashidhar Versus Indian Overseas Bank & Ors in Civil Appeal No. 10673 of 2018* has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.

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22. Hence, this Adjudicating Authority deems it proper to allow this Application. Accordingly, in exercise of powers conferred under Sub-Clause (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the IBC 2016, we proceed to pass the Order as follows:

ORDER

- a) This Adjudicating Authority hereby order for Liquidation of **M/s. MAKRO CAST PRIVATE LIMITED**, which shall be conducted in the manner as laid down in Chapter III of Part II of the IBC, 2016.
- b) The Applicant herein/Resolution Professional has expressed his inability to continue as the Liquidator in the COC meeting held on 25.07.2024. Hence, This Adjudicating Authority hereby appoints **Mr. Kantipudi Venkata Raju (Registration No. IBBI/IPA-002/IP-N01125/2021-2022/13675, Address: 4-198, Manikya Nagar VTC, Kakinada, East Godavari District, Andhra Pradesh – 533005; email Id: kantipudiven@gmail.com;)** as a Liquidator of the Corporate Debtor from the available list of panel of Insolvency Professionals as maintained by the IBBI.
- c) The Liquidator shall issue public announcement stating that Corporate Debtor is in Liquidation.
- d) The Moratorium declared under Section 14 of the IBC, 2016 shall cease to operate here from.
- e) Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor.

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This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- f) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- g) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- h) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- i) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
- j) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued Liquidation process by the Liquidator.
- k) Copy of the Order shall be furnished to the IBBI, to the Regional Director (South Eastern Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Andhra Pradesh, the Registered Office of the Corporate Debtor; and the Liquidator.

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23. With the above directions IA(IBC)(LIQ)/3/2024 in CP(IB)/165/9/AMR/2019 is disposed of. Hence this Order.

Sd/

SANJAY PURI
MEMBER (TECHNICAL)

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RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

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