

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 18.11.2022 AT 10.30 AM**

| TC/CP. Nos. | CA/IA No. | Section/ Rule | Name of Parties |
|--------------------------|--------------------------------------|------------------|----------------------------------------------------------------|
| CP(IB) No.165/9/AMR/2019 | IA(IBC)/320/2022, IA(IBC)/68/2021 | 9 of IBC | Jayasiddhi Ganesh Enterprises Pvt Ltd Vs Macro Cast Pvt Ltd |

Counsel for Petitioner(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |
| | | | |

Counsel for Respondent(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |
| | | | |

ORDER

IA(IBC)/320/2022 is allowed, vide separate orders.

IA(IBC)/68/2021:

In view of the orders passed in IA(IBC)/320/2022, the Counsel does not press for this Application. Hence, this application is dismissed as not pressed.

Sd/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

NCLT Amaravati Bench
I.A(IBC) No. 320/2022
IN

CP (IB) No. 165/9/AMR/2019

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

*** **

I.A (IBC) No. 320/2022

IN

CP (IB) No. 165/9/AMR/2019

**Under Section 30(6) and 31 of Insolvency and Bankruptcy Act,
2016 and Regulation 39 of Insolvency and Bankruptcy Board of
India (Insolvency Resolution for Corporate Persons) Regulations,
2016.**

**In the matter of
M/s. MAKRO CAST PRIVATE LIMITED**

Between:

Mr.Kammula Prabhakar Rao,
Resolution Professional for
Makro Cast Private Limited,
Address: 39-4-1, S5, Koduru Enclave,
Pitchaiah Street, Labbipet,
Vijayawada, Krishna District,
Andhra Pradesh – 520010.

... Applicant/Resolution Professional

Date of pronouncement of Order: 18.11.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant/RP: Mr. Kammula Prabhakar Rao, RP

Per:

Justice Telaprolu Rajani, Member Judicial

ORDER

1. The Resolution Professional (in short the RP) in respect of M/s. Makro Cast Private Limited (the Corporate Debtor) seeks approval of the Resolution Plan (in short the Plan) in this Application under Section 30(6) and 31 of Insolvency and Bankruptcy Act, 2016 and Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016.
2. The brief facts leading to the Application are as under.
 - i) This Bench, vide its order dated 13.12.2019 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and Mr.Kammula Prabhakar Rao, Applicant herein was appointed as Interim Resolution Professional (IRP).
 - ii) The Applicant made a public announcement in Form-A on 19.12.2019, inviting claims from the Creditors. Received the claims from different creditors amounting to Rs.116,10,92,934/-. The Applicant constituted Committee of Creditors (CoC).
 - iii) The 1st CoC meeting held on 17.01.2020, decided to appoint the Applicant as Resolution Professional (RP).

- iv) The Applicant submitted Information Memorandum to the CoC on 07.03.2020. Two sets of Registered valuers have been appointed and got valued the assets of the Corporate Debtor through registered valuers.
- v) The Applicant made public announcement for Expression of Interest (EoI) on 02.03.2020. In response Seven (7) EoIs were received from the Prospective Resolution Applicants (PRAs). The Applicant submitted Information Memorandum and Request for Resolution Plan to the PRAs. Out of seven PRAs, only one PRA submitted its Resolution Plan and the same was placed before the CoC for approval. The CoC directed the Resolution Applicant to come up with a better resolution fund.
- vi) In the 8th CoC meeting, the Resolution Applicant submitted a revised Resolution Plan to the CoC. The resolution fund as per original Resolution Plan and upgraded Resolution Plan are as follows:

| Resolution Fund and its Allocation to Creditors | | | |
|-------------------------------------------------|--------------------|-----------------|--------------|
| Original Plan | Financial Creditor | Other Creditors | Total |
| Gross Fund | 15,80,80,951 | 1,38,67,020 | 17,19,47,971 |
| Less: Paid in OTS | 2,40,00,000 | - | 2,40,00,000 |

| | | | |
|-----------------------------|--------------------|-----------------|--------------|
| Net Fund | 13,40,80,951 | 1,38,67,020 | 14,79,47,971 |
| Revised Plan | Financial Creditor | Other Creditors | Total |
| Gross Fund | 14,15,80,951 | 1,51,69,791 | 15,67,50,742 |
| Less: Paid in OTS | - | - | - |
| Net Fund | 14,15,80,951 | 1,51,69,791 | 15,67,50,742 |
| Increase in Resolution Fund | 75,00,000 | 13,02,771 | 88,02,771 |

- vii) The CoC resolved to reject the Resolution Plan as the resolution fund offered by the Resolution Applicant is not satisfactory. The same was communicated to the Resolution Applicant.
- viii) In 9th CoC meeting held on 28.05.2021, the CoC resolved to liquidate the Company with 100% voting and directed the Resolution Professional to file an application for liquidation. The Applicant filed an application for liquidation of the Corporate Debtor before this Tribunal and the same is pending.
- ix) The Resolution Applicant filed an application before this Tribunal seeking to reconstitute the CoC of the Corporate Debtor and to stay the proceedings in the liquidation application. The same was allowed by this Tribunal on 06.04.2022. Pursuant to the order of this Tribunal dated

06.04.2022, the Resolution Applicant submitted a revised Resolution Plan on 19.04.2022. The CoC was reconstituted and several CoC meetings were held. Finally, on 04.10.2022 the CoC approved the Resolution Plan through e-voting. The Resolution Professional issued a letter of intent to the Resolution Applicant on 13.10.2022. The Resolution Applicant accepted the same on 17.10.2022 and submitted the Performance Guarantee for Rs.50 Lakhs.

- x) The following is the summary of the Plan/Restructuring Proposal:

The Plan offers an amount of Rs.18,00,00,115/- as detailed below:

| Particulars | Claim Admitted/Submitted | Resolution Fund |
|----------------------------------------------------------|--------------------------|-----------------|
| 1. CIRP Costs | 74,00,000 | 84,00,000 |
| 2. Financial Creditors | 84,04,04,755 | 15,99,80,951 |
| 3. Operational Creditors other than workworn & employees | 14,10,51,109 | 32,31,533 |
| 4. Operational Creditors being workworn & employees | 3,89,15,653 | 77,87,631 |
| 5. Operational Creditors being statutory dues | 7,01,25,545 | 6,00,000 |
| Claims not submitted | | |
| Operational Creditors | 3,43,79,826 | - |
| APTRANSCO | 1,27,75,637 | - |
| Related Parties | 9,01,34,933 | - |
| Total | 1,23,51,87,458 | 18,00,00,115 |

The timelines for the payment of the above mentioned debts of the Corporate Debtor are as follows:

| Particulars | Timeframe |
|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Payment of CIRP Costs | Within 30 days from the NCLT order date in priority to any other payment. |
| Payment to Financial Creditors | Within 210 days of the date of NCLT order |
| Payment to Operational Creditors other than workmen and employees | Within 210 days from the NCLT order date in priority over any payments to Financial Creditors. |
| Payment to Operational Creditors being workmen and employees | Within 210 days from the NCLT order date in priority over any payments to Financial Creditors. |
| Statutory dues | Within 365 days from the NCLT order date as the settlement of dues to APTRANSCO is voluntary since claim was not submitted to the Resolution Professional. For the statutory dues, for which claims were submitted within 210 days from the date of NCLT order. |
| Contingent liabilities | Not applicable. |
| Shareholders | On or before the effective date |
| Other creditors not included above, if any | Not applicable |

- a) The RA is proposing to constitute Monitoring Committee consisting of Three (3) members for

implementation of the Resolution Plan, as given below:-

- i. Mr.Kammula Prabhakar Rao, Resolution Professional, shall be the Chairman of the Monitoring Committee.
- ii. One Representative of the CoC.
- iii. One Representative of the Resolution Applicant

xi) Hence this Application.

3. I have heard the Applicant and perused the Resolution Plan. There is no one opposing the approval of the Resolution Plan as sought for in this application. The Resolution Plan submitted by the Resolution Applicant is found to be meeting all the requirements of the IBC, 2016 and more importantly Section 30 (2) of the IBC Code and Regulation 38 (1A) and applicable CIRP Regulations. It does not contravene any of the provisions of law. It caters to the interest of all the Stakeholders.
4. Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan –
 - a) provides for the payment of insolvency resolution process costs in the manner specified by the Board in priority to the payment of other debts of the corporate debtor;

- b) provides for the payment of debts of the operational creditors in such manner as may be specified by the Board, which shall not be less than-
- i. the amount to be paid to such creditors, in the event of liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of the above provision is as under:

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal

proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and

(ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

- c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- d) The implementation and supervision of the resolution plan;
- e) Does not contravene any of the provisions of the law for the time being in force;
- f) Confirms to such other requirements as may be specified by the Board.

5. Section 30(4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor

*and such other requirements as may be specified by
the Board.”*

6. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan, as approved by the CoC, meets the above requirements.
7. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
 - a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

- e) The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code.
8. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through registered valuers and the Liquidation value is Rs.17,92,53,933/- and the Resolution Plan offers Rs.18,00,00,115/-.
9. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1-A), 38 (1-B) 38(2) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and to operate in its normal course of business upon implementation of Resolution Plan. No objection has been filed by anyone in this regard.
10. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal, the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of the Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.
11. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex

Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

12. **In CoC of Essar Steel** (Civil Appeal No.8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass

upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra)."

13. In view of the discussions and the law thus settled, the instant Resolution Plan is found to be meeting the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

- i. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- ii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Andhra Pradesh for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- iv. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- v. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- vi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant.

Accordingly, I.A.No.320/2022 in CP (IB) No.165/9/AMR/2019 is disposed of.

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**