

## Allahabad Bench

CA No. 13/2019, CA No. 196/2019 in  
CP No.(IB) 9/ALD/2018ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON 23.07.2019

NAME OF THE COMPANY: Macro Leafin Private Limited v/s Dhrovv India Limited

SECTION OF I &amp; B CODE: 60(5) &amp; 33 IBC

Sl. NO.	Name	Designation	Representation	Signature
1.	SHUBHAM NARWAN	Advocate	CAE / JUDGE	
2.	Gurjan Jadwani	Adv.	Applicant/ Shareholder	
3.	Archi Agarwal	Adv.	Operational Director	

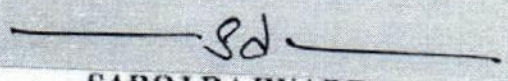
CA No. 13/2019, CA No. 196/2019 in CP No. (IB) 9/ALD/2018

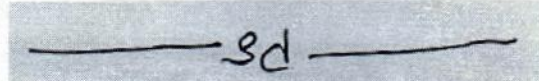
Parties are represented by their respective counsels.

Order pronounced in the open court.

Application is allowed, vide separate order sheet.

Dated: 23.07.2019

  
 SAROJ RAJWARE  
 MEMBER (T)

  
 H.P. CHATURVEDI  
 MEMBER (J)

 Typed by:  
 Kavya Prakash Srivastava  
 (Stenographer)
CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL
  
 26/08/19  
 S. A. MEHDI
DESIGNATED REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD U.P.
 compared by me  
 shilpi  
 26/08/19

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BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
ALLAHABAD BENCH

COMPANY APPLICATION NO.196 OF 2019  
AND  
CA No.13 of 2019  
AND  
CA No. 124 of 2019  
IN  
CP NO.(IB)9/ALD/2018

IN THE MATTER OF:

Ms. Pooja Bahry,  
Resolution Professional of  
Dhrovv India Limited  
Having its Office at,  
A1-4 & A16-19, Sector 83, Noida Industrial Area,  
Noida, U.P. 201301.

.....APPLICANT  
(RESOLUTION PROFESSIONAL)

IN THE MATTER OF :

MACRO LEAFIN PRIVATE LIMITED

..... ORIGINAL APPLICANT

V/S

DHROVV INDIA LIMITED

..... CORPORATE DEBTOR

ORDER DELIVERED ON 23<sup>RD</sup> JULY, 2019

CORAM : HON'BLE SH. H.P. CHATURVEDI, MEMBER (J)  
: HON'BLE MS. SAROJ RAJWARE, MEMBER (T)

FOR RP : MS. ARCHI AGARWAL, ADVOCATE

ORDER

PER SE : HON'BLE SH. H.P. CHATURVEDI, MEMBER(J)

1. The case is taken up today for pronouncement of order in the present  
CA No.196/2019.

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2. The present CA is filed on behalf of Resolution Applicant U/s 60(5) of the Insolvency and Bankruptcy Code, 2016 stating *inter-alia* that the settlement has been arrived at between the Parties i.e. the Corporate Debtor and the ICICI Bank being a sole Financial Creditor on 24.05.2019 and such One Time Settlement (OTS) has been accepted and reduced in writing by way of a deed of settlement dated 24.05.2019.
3. Pursuant to such settlement, the Bank being sole member of the CoC duly communicated its decision to the RP through its letter dated 30.05.2019. The relevant extract of the present CA is being reproduced herein below :-



*"We write in reference to the on-going corporate insolvency resolution process (CIRP) of Dhrovy India Limited (Corporate Debtor) under the Insolvency and Bankruptcy Code, 2016 (Code).*

*In reference to above, we note that an application seeking liquidation of the Corporate Debtor under Section 33 of the Code has been filed by the RP and the said application is pending before the Hon'ble NCLT, Allahabad.*

*In continuation to above, we would like to inform you that the majority shareholders of the Corporate Debtor approached ICICI Bank Limited (ICICI Bank) with a proposal to settle the claims of ICICI Bank against the Corporate Debtor. The majority shareholders also filed an application before the Hon'ble NCLT, Allahabad to this extent. Pursuant to the said application and relying on the representations made by the majority shareholders of the Corporate Debtor, ICICI Bank agreed to the settlement offer of the majority shareholders of the Corporate Debtor.*

*Pursuant to the above, the majority shareholders of the Corporate Debtor and ICICI Bank entered into a settlement agreement dated May 24, 2019 (Settlement Agreement). As per the terms of the Settlement Agreement, the majority shareholders shall pay Rs.40.0 million as upfront settlement amount to ICICI Bank and the remaining Rs.260.0 million within 90 days from the date of Settlement Agreement. The majority shareholders have handed over a demand draft of*

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*Rs.40.0 million to ICICI Bank. A copy of the Settlement Agreement is enclosed with this letter.*

*In light of the above, and considering that the settlement shall maximize the value of the assets of the Corporate Debtor, as represented by the majority shareholders of the Corporate Debtor, ICICI Bank, constituting 100% of the committee of creditors, request you to take appropriate steps to have the liquidation application and the ongoing CIRP of the Corporate Debtor withdrawn."*

4. It is also informed that the above referred settlement has been approved with the 100% majority of member of the CoC (i.e. ICICI Bank) which is prior to completion of the CIRP of 270 days, hence which is in order. Thus, the sole member of the CoC made request to the RP to withdraw the liquidation application and to recall the on-going CIRP of the Corporate Debtor.



5. In respect of above said settlement, we heard the submission of learned counsel representing the RP as well as Advocate for Suspended Board/ Shareholder of the Corporate Debtor Company. We further perused the previous proceeding/ order passed by this Bench dated 24.04.2018 by admitting the IB petition and initiating CIRP in respect of the Corporate Debtor company namely 'Macro Leafin Private Limited' by appointing IRP Mr. Neeraj Chaudhary, who later on replaced by present RP Ms. Pooja Bahry. It is also contended that before the completion of maximum period prescribed for the CIRP i.e. 270 days, the Suspended Management/ Shareholder approached the Financial Creditor Bank which is sole member of the CoC and they reached at amicable settlement, which has been reduced in writing is annexed (as Annexure A1) to the present CA.

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6. As per the agreed terms of the settlement, the Corporate Debtor has offered INR 300.0 million and they also offered INR 40.0 million as an upfront payment of settlement amount, such has duly been received by the Financial Creditor. Thus has confirmed and consented to such settlement. After accepting such settlement, the entire debt of the Corporate Debtor company, so far as the Financial Creditor is concern now stands settled.

7. It is also a matter of record that the CoC in its 14<sup>th</sup> meeting held on 07.01.2019 had rejected the resolution plan submitted by one resolution applicant namely 'Panch Tatva Promoters Pvt. Ltd.' and in the very same meeting further resolved to apply for the liquidation of the Corporate Debtor company.



8. Hence, the present CA No.13/2019 seeking for liquidation of the Corporate Debtor Company was filed before this Bench of NCLT on 18.01.2019, the same is still pending. Meanwhile, as a subsequent development took place, the CoC now reports its settlement with the Corporate Debtor Company with the approval of its 100% majority and now praying for the withdrawal of the liquidation application as well as to recall the CIRP. The RP as well as the CoC in its application has stated that such settlement is bonafide and reasonable, it shall maximize the value of the Corporate Debtor Company, hence, there remains no further necessity that company must go for liquidation because the main object and theme of the present IB Code is to seek a viable resolution for the Corporate Debtor company as a going concern and to maximize the value of its assets. It is also reported that the Corporate Debtor Company was in dry-cleaning

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business for the last 17 years and generated employment for 1,000 people. Hence, if such settlement is not accepted then the company shall go for liquidation, then this would cause unemployment of 1,000 persons, who would be out of their livelihood and impliedly it will cause prejudice to the national economy.

9. Considering such main theme of the I & B Code and the light of the various judicial precedents pronounced by the Hon'ble Supreme Court of India, Hon'ble NCLAT and other Benches, the CoC has considered and accepted the settlement offer.

10. We examined the relevant provision of the IB Code in this regard. Now, it is settled legal position that the RP and CoC are legally expected to explore and make every step for bringing resolution and revival of the company which is a rule, while liquidation thereof can only be a last consequence. Further, in the present matter, this Adjudicating Authority has not yet passed a formal liquidation order. Therefore, there can be no impediment for accepting such settlement even during the process of liquidation as the liquidator has been empowered under the Regulation 32 of the IBBI Liquidation Process Regulation, 2016 that he can sell the assets of the company under liquidation as a going concern. The relevant extract of the Regulation 32(e) & 32(f) reads as under:

*"32. Sale of Assets, etc.*

*The liquidator may sell*

*(a) An asset...*

*(b) The assets....*

*Xxxxxx*



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(e) the Corporate Debtor as a going concern; or  
 (f) the business(es) of the corporate debtor as a going concern:  
**PROVIDED** that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate."

11. Moreover, the Hon'ble Supreme Court in its judgment of *Arcelormittal India Private Vs. Satish Kumar Gupta* has observed that "we cannot forget the consequence of the chopper filing is corporate death." There the only reasonable construction of the code is the balance to be maintained between timely completion of the C.I.R.P. and the Corporate Debtor being put in to the liquidation.



The relevant Paragraph of the judgment of the Hon. Supreme Court may be quoted herein below:

83. Given the fact that both the NCLT and NCLAT are to decide matters arising under the Code as soon as possible, we cannot shut our eyes to the fact that a large volume to be handled by both the aforesaid Tribunals. What happens in a case where the NCLT or the NCLAT decide a matter arising out of Section 31 of the Code beyond the time limit of 180 days or the extended time limit of 270 days? *Actus curiae neminem gravabit* - the act of the Court shall harm no man - is a maxim firmly rooted in our jurisprudence (see *Jang Singh v. Brijlal & Ors.* [1964] 2 S.C.R. 146 at page 149, and *A.S. Antulay v. R.S. Nayak & Ors* [1988 Supp. 1 S.C.R. 1 at page 71]). It is also true that the time taken by a Tribunal should not set at naught the time limits within which the corporate insolvency resolution process must take place. However, we cannot forget that the consequence of the chopper falling is corporate death. The only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the

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*Corporate Debtor otherwise being put into liquidation. We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to see that this is made possible."*

12. By taking into the consideration the above stated legal position and by following the above stated judicial precedents, we are of the view that the present application (CA No.196/2019) deserves to be allowed. Hence, the CA No.196/2019 is allowed in terms of its prayer clause. Consequently, the liquidation application (CA No.13/2019) stands withdrawn.



13. Since, the settlement has been arrived at between the Corporate Debtor and the sole Financial Creditor with 100% majority of the CoC, no further requirement to keep continue of the CIRP. Hence, it is hereby recalled in the light of the settlement arrived between the Corporate Debtor and the sole Financial Creditor. Consequently, the moratorium declared in respect of the Corporate Debtor Company shall cease to have effect.
14. It is further directed that all the member of the CoC shall make payment of CIRP expenses including professional fees of the IRP within four weeks from the date of receipt of an authentic copy of this order under intimation of the Registry of this Tribunal.

15. In the result, the CA No.124/2019 filed by the majority shareholder of the Corporate Debtor Company seeking direction to the RP and CoC

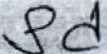
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to consider the resolution plan has now become infructuous, because the relief as prayed in such application has already been allowed.

16. Accordingly, the CA No.124/2019, CA No.13/2019 and CA No.196/2019 are disposed of.

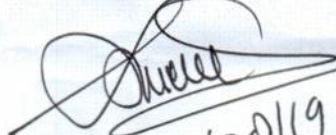
Dated: 23.07.2019

  
SAROJ RAJWARE  
MEMBER (TECHNICAL)

  
H.P. CHATURVEDI  
MEMBER (JUDICIAL)

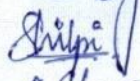
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28/08/19

S. A. MEHDI  
DESIGNATED REGISTRAR  
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26/08/19