

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY- MEMBER JUDICIAL**

**PRESENT: HON'BLE SHRI BINOD KUMAR SINHA -MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.12.2019 AT 10.30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA NO. 586/2019 in CP(IB) NO. 126/9/HDB/2017
NAME OF THE COMPANY	Shree Raghav Ispat (India) Pvt Ltd
NAME OF THE PETITIONER(S)	BMM Ispat Limited
NAME OF THE RESPONDENT(S)	Shree Raghav Ispat (India) Pvt Ltd
UNDER SECTION	9 OF IBC

**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

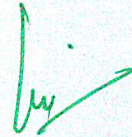
**ORDER**

IA No.586/2019

Order pronounced in open court. IA allowed vide separate order.



**MEMBER TECHNICAL**



**MEMBER JUDICIAL**

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IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERBAD

IA No.586/2019

In

CP (IB) No.126/9/HDB/2017

In the matter of :-

M/s. SHREE RAGHAV ISPAT (INDIA) PRIVATE LIMITED

Between:

1. M/s.BMM ISPAT LIMITED  
Registered Office Situated at:  
No.114, Danapur Village,  
Hobli Mariyammanahalli,  
Hosapete Taluk, Ballari District,  
Karnataka – 583222.

...Petitioner/  
Operational Creditor

Vs

2. M/s.SHREE RAGHAV ISPAT (INDIA) PRIVATE LIMITED  
Registered Office Situated at:  
1-7-1062/2, Azamabad, Ramnagar,  
Hyderabad, Telangana – 500020.

...Respondent/  
Corporate Debtor

3. M/s.SHREE RAGHAV ISPAT (INDIA) PRIVATE LIMITED  
(Rep. by Resolution Professional, Kaplana G)  
IBBI/IPA-001/IP-P00756/2017-2018/11288  
H.No.16-11-19/4, G-1, Sri Laxmi Nilayam,  
Saleem Nagar Colony, Malakpet,  
Hyderabad, Telangana – 500036.

...Applicant/  
Resolution Professional

Date of Order: 06.12.2019

Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.

Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsel Present:

For the Applicant/Resolution Professional:

Mrs. Kalpana G, RP

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Per: Shri. K. Anantha Padmanabha Swamy, Member Judicial.

ORDER

1. The present Application bearing IA No.586/2018 is filed seeking the following prayers:-

- a. Pass an Order for approval of the submitted Resolution Plan (which has been approved by COC with 100% voting rights) under section 31(1) of the IBC, 2016;
- b. To pass an order to discharge or provide immunity from all the liabilities/Disputes/proceedings/penalties/suits/attachments/cases whether civil or criminal filed against the Corporate Debtor whether accounted/known or not on payment of the agreed consideration by Resolution Applicant;
- c. To approve for waiver of Cost of transfer if any payable under respective statues, in relation to Shares, Immovable and Movable properties of the Corporate Debtor in favor of Resolution Applicant;
- d. To pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstance of the case.

2. Brief contents of the Resolution Plan are as follows:

- a. The amounts provided for the stakeholders under the Resolution Plan are as under:

S.No.	Description of the payment	Amount in Rs.
1	Insolvency Resolution Process Costs	28,00,000
2	Workmen dues	Nil
3	<b>CREDITORS</b>	
	1. Operational Creditors	6,00,000

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	2.	Secured Creditors	Financial	5,50,55,000
	3.	Unsecured Creditors	Financial	Nil
	4.	Other Creditors		Nil
4	Statutory Dues			Nil
	TOTAL RESOLUTION PLAN AMOUNT			5,84,55,000

- b. TERM OF PLAN AND IMPLEMENTATION SCHEDULE 38(2)(a): The indicative implementation schedule for this Resolution Plan is Set out below:

S.No.	Activity	Timeline
1	Effective date	Approval of this Resolution Plan by the Adjudicating Authority
2	Completion Date	45 days from the date of the approval of the Adjudicating Authority

- c. The said consideration will be paid in phased manner as follows:
- a) 25% of the agreed Resolution Plan amount will be paid within 7 days from the date of approval of the adjudicating authority (NCLT)

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- b) 50% of the agreed Resolution Plan amount will be paid within 30 days from the date of approval of the adjudicating authority (NCLT)
- c) Balance 25% agreed Resolution Plan amount will be paid within 15 days thereafter
- d. Management and control of the business of the Corporate Debtor during its term 38(2)(b): The management and control of the business of the Corporate Debtor during the term of the Resolution Plan process shall rest with the Resolution Applicant. The board of directors of the Corporate Debtor shall continued to be suspended.
- e. Adequate means for supervising its implementation 38(2)(c): It is proposed that the present Resolution Professional will supervise the implementation of the Resolution Plan. The Resolution Professional to manage the day-to-day affairs of the Corporate Debtor under its supervision, till the completion date of this plan.
- f. Source Of Funds: The Resolution Applicant confirms that it has sufficient funds to make the payments described above and has the ability to raise such amounts from other sources.
- g. Limited Liability:
- i. Upon approval of this Plan by the Adjudicating Authority any and all rights and entitlements of any actual or potential creditors of the Corporate Debtor or arising on account of the acquisition of assets of Corporate Debtor by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall stand permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.

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ii. Any contingent liability on account of any claims/statutory demands arising under any law for the time being in force and payable to any person, including counterparty to a contract or to the Central or State Governments or any local authority, resulting from a contract, statute, Judicial proceeding or otherwise shall, if undisputed be paid/payable after the full payments as aforesaid i.e. effectively after the term of Resolution Plan implementation in its entirety. No claims for any other creditors shall be entertained.

4. Resolution Applicant confirms and declared that all the provisions of any law for the time being in force have been complied and not contravened any of the provisions of the law for the time being in force as required under Section 30(2)(e) & 30(2)(f) of the Insolvency and Bankruptcy Code, 2016.
5. The details of the Resolution Applicant and the compliances as per code are enumerated in table as under:

1	Name of the Resolution Applicant	M/s. Amarsons Pearls & Jewels
2	Corporate Structure	Proprietary Concern, an ISO 9001:200 Certified Company.
3	Reg. Office Address	Shop No. 1-7-395, Ground Floor, Opp. Nan King Restaurant, S.D Road, Park Lane, Secunderabad – 500003, Telangana.
4	Contact Person name and Phone No, email address	Vijay Proprietor Phone No. 040 27816095, 6461317 Email id: <a href="mailto:aspearl@ymail.com">aspearl@ymail.com</a> Website: <a href="http://amarsonsppearl.com">amarsonsppearl.com</a>
5	Brief Description about the Applicant	Applicant is one of the leading pearl jewelry suppliers and offers wide range of genuine pearls of the highest quality, value and designs and have experience over a period of two decades.
6	Compliances under the IBC and RFRP document	Fulfilled

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	1. Section 30(1)	Affidavit under Section 29A stating that he is eligible to submit Resolution Plan – Submitted
	2. Section 30(2)(a)	Payment of Insolvency Resolution Process Costs – provided in priority over other debts of the Corporate Debtor. Clause 5A at page no.118
	3. Section 30 (2)(b)	Payment to Operational Creditors – provided, as specified by the Board in CIRP Regulation 38 (1): <i>The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.</i> – Provided in Clause 5B at page no.119
	4. Section 30 (2)(c)	Management of the affairs of the Company after approval of the Resolution Plan – vests with the Resolution Applicant Mentioned in Clause 6ii at page no.135
	5. Section 30 (2)(d)	Implementation and supervision of the Resolution Plan – by the Resolution Professional. Mentioned in Clause 6iii at page no.135
	6. Section 30 (2)(e)	Does not contravene any of the provisions of the law for time being in force – mentioned in covering letter at page no.111
	7. Section 30 (2)(f)	Confirms to such other requirements as may be specified by the board – mentioned in Clause 2ii at page no.114
7	Compliances under Regulation 38 of CIRP Regulations, 2016	
	1. Term of the plan 38(2)(a)	45 days from the date of approval from NCLT
	2. Management and control of the Corporate Debtor 38(2)(b)	Shall vest with the Resolution Applicant.
	3. Adequate means for supervising its implementation 38(2)(c)	Present Resolution Professional will supervise and implement the Resolution Plan.
8	Source of funds	Mentioned in Clause 7 at page no.136, attached letter for source of funds
9	Net worth	Attached Net worth certificate which is certified by the Chartered Accountant for Rs.3.77 crs as per the provisional financials as on 31 <sup>st</sup> March, 2019.

6. The RP has submitted that valuation of the assets of the Corporate Debtor was conducted through two registered valuers and the summary and comparative chart is placed at Pg.56 of the instant Application. A valuation summary has been prepared on the basis of average of the two valuations.

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7. Valuation Summary of the assets of the Shree Raghav Ispat (India) Private Limited as ascertained by the RP are as below:

S.No.	Item	Fair Market value	Realizable value	Distress sale Value
1	The property is situated at Survey No.394, Raikal Village, Farooqnagar Mandal, Ranga Reddy District, Telangana, The Factory premises is located on a piece of land admeasuring Ac 4-24guntas or say 4.60 acres	413.60	353.05	300.15
2	This property is situated adjacent to the factory site on the northern side with Land admeasuring Ac.1.31 Guntas or say 1.78acres along with 2nos lean to roof sheds situated at Survey No.49/E & 50/E, Annaram Village, Farooqnagar Mandal, Ranga Reddy Dist, (formerly Maboobnagar Dist) Telangana.	65.75	55.90	47.70
3	This is an Agricultural dry Land admeasuring 8.00 Acres after road affected 7.50 acres. The property is situated Sy. Nos. 412 & 413, Aregudem H/o. Panthangi Village, Choutuppal Mandal, Yadadri-Bhongir Dist surrounded by a few industries on the southern side.	202.50	172.13	146.25

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4	The Plant & Machinery relating to the factory situated at Survey No.394, Raikal Village, Farooqnagar Mandal, Ranga Reddy District, Telangana	106.85	88.05	67.00
	<b>Total Amount</b>	<b>788.70</b>	<b>669.13</b>	<b>561.10</b>

8. The RP/Applicant stated that as per Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Committee of Creditors shall record the reasons for approving or rejecting a Resolution Plan. As per the amendment to the Regulation 39 dated 25.07.2019 the Committee shall record its deliberations on feasibility and viability of Resolution Plan. In compliance of this Regulation the Committee of Creditors recorded their reasons for approving the Resolution Plan which are as follows:

- i. *"The resolution applicant has offered Rs.584.55 lakhs which is more than the liquidation value of the assets of Rs.561.00 lakhs.*
- ii. *Even if we go for liquidation of the company, we are not sure that whether the properties will be sold within the stipulated time of liquidation and at the price quoted as liquidation value. If the properties are not sold within the liquidation period, it may take long time to realize the amount in other ways.*
- iii. *The liquidation process would take some more time to recover the Corporation dues, hence the Corporation accepted resolution plan.*
- iv. *Our book outstanding in the above captioned account as on 30.06.2019 is Rs.652.44 lakhs and the account falls under DOUBTFUL-III category Non-Performing Asset, we have kept provision of Rs.652.44 lakhs aside from our profit. If the account get resolved then the provision of Rs.652.44 lakhs will be released (profit of the bank will be increased by that extent).*
- v. *Amount to be paid by the party as per the resolution plan can be recycled for fresh sanction of loans.*
- vi. *The liquidation process would take some more time to recover the Corporation dues, hence the Corporation accepted resolution plan.*
- vii. *The unit is in bad shape and the machinery also had become outdated and the number of prospective purchasers may be less.*
- viii. *The amount that would be received by the Corporation is almost equivalent to the valuation of the assets mortgaged to the Corporation."*

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9. Recording the reasons as above, the members of CoC in the 10th CoC meeting dated 28.06.2019, unanimously approved the resolution plan submitted by the Resolution Applicant.
10. That RP filed a memo dated 24.07.2019, wherein it is stated that the RP has given the paper publication on 24<sup>th</sup> July, 2019 in two newspapers i.e., Financial Express for English and Nava Telangana for regional language to serve the notice to the Respondents in the matter of Shree Raghav Ispat (India) Private Limited in the application under section 30 (6) & 31(1) of Insolvency and Bankruptcy Code, 2016 r/w Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 to the Corporate Debtor i.e., Shree Raghav Ispat (India) Private Limited.
11. RP filed a memo dated 21.10.2019 wherein it is stated that the Resolution Applicant M/s. Amarson Pearls & Jewels submitted the Demand Draft for Rs.25,00,000/- drawn in favor of Shree Raghav Ispat India Pvt Ltd, dated 15<sup>th</sup> October, 2019 to the Resolution Professional on 16<sup>th</sup> October, 2019 and further vide memo dated 25.10.2019, RP stated that the members of CoC submitted their letter of acceptance of the Performance Guarantee submitted by the Resolution Applicant M/s. Amarsons Pearls & Jewels in the form of Demand Draft for an amount of Rs.25,00,000/-
12. RP filed a memo dated 01.10.2019, wherein it is stated that the Resolution Plan submitted by the Resolution Applicant is in compliance with the provisions laid down in the latest Amendment to Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is further stated in the memo dated 01.10.2019 that as per the provisions of Section 30(2)(a) of IBC, 2016 the Resolution Plan *provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor*. It is further stated that the Payment of Insolvency Resolution Process Costs are provided in priority over other debts of the Corporate Debtor. (Clause 5A at page no.118 of the Resolution Plan).
13. Heard Resolution Professional and perused the Resolution Plan and other documents submitted along with Application.

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14. Section 30(2) of the Code as amended w.e.f. 06.08.2019 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 a 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 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 a 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.
- 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

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f) . confirms to such other requirements as may be specified by the Board.

14. Section 30(4) of the Code as it stands at present after the amendment 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.”*

15. Section 30(6) of the Code enjoins the resolution professional to submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority. Section 31 of the Code deals with the approval of the resolution plan by the Adjudicating Authority, if it is satisfied that the resolution plan as approved by the committee of creditors under section 30(4) meets the requirements as referred to in section 30(2).

16. Thus, before approving the Resolution plan, it is the duty of the Adjudicating Authority that it should satisfy itself that the Resolution plan as approved by the COC meets the requirements as referred to in sub-section (2) of Section 30.

17. On perusal of the Resolution Plan, this Adjudicating Authority has observed that the Resolution plan placed for consideration provides for the following:

a) Payment of CIRP Cost as specified U/s 30(2)(a) of IBC, 2016.

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- b) Repayment of Debts of Operational Creditors as specified U/s 30(2)(b) of IBC, 2016.
  - c) Provides for management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of IBC, 2016.
  - d) The implementation and supervision of Resolution Plan shall be done by Insolvency Resolution Professional and by the COC as specified U/s 30(2)(d) of IBC, 2016.
  - e) 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 IBC, 2016.
  - f) The Resolution plan conforms to such other requirements specified by the Board.
18. In terms of Regulation 27 of CIRP Regulations, Liquidation value was ascertained through two registered valuers, and the Resolution Plan offers more than the average liquidation value.
19. The RP has complied with the code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP regulations.
20. The identity of the Resolution Applicants have been duly verified by the RP and affidavit as per section 30(1) of the Code has been obtained from the Resolution Applicants stating that it is not ineligible U/s 29A of the IB Code, 2016.
21. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan, There is no objection filed by any other person in this regard.
22. Copy of Form-H (Compliance Certificate) filed by the RP along with the Plan has been perused and considered. The RP *inter-alia* has certified as under:

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- i. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
  - ii. The Resolution Applicant M/s.Amarsons Pearls and Jewels has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.
  - iii. The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by two votes i.e., 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
  - iv. The voting was held in the meeting of the 10<sup>th</sup> CoC on 28<sup>th</sup> June, 2019 where all the members of the CoC were present.
23. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and Regulations thereunder.
24. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its 10th CoC meeting dated 28.06.2019 with 100% votes cast in favour of Approval of Resolution Plan.
25. In *K Sashidhar Vs. Indian Overseas Bank & Others*, decided on 05.02.2019 in Civil Appeal No.10673/2018 with CA Nos.10719/2018, 10971/ 2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), 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

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adjudicating authority (NCLT). On receipt of such a proposal, the adjudicating authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.

26. In the said judgment, in para 35, the Hon'ble Supreme Court 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.
27. In view of the discussions in the foregoing paragraphs, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law. Therefore, the 'Resolution Plan' annexed with Application bearing IA No. 586 of 2019 filed in CP(IB) 126/9/HDB/2017 is hereby approved, which forms part of this Order and which shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.
28. However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. We are of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same view has also been held by Hon'ble Principal Bench, NCLT in the case of *Parveen Bansal Vs. Amit*

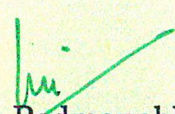
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*Spinning Industries Ltd.* in CA No.360 (PB) 2018 in CP No (IB) 131 (PB)/2017.

29. Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.
30. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
31. This Adjudicating Authority hereby directs the RP to supervise the implementation of the Resolution plan and file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.
32. The order of moratorium passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing of this Order.
33. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with Copy of this Order, so that the Board may record the same on its data-base.
34. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
35. Accordingly, IA No. 586 of 2019 is disposed of as allowed.

  
06.12.19  
Dr. Binod Kumar Sinha  
Member Technical

  
K. Anantha Padmanabha Swamy  
Member Judicial