

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH, AT MANGALAGIRI**

I.A. No. 407 of 2023
IN
C.P (IB) No. 77/9/AMR/2021

[under section 30(6) of the Insolvency and Bankruptcy code, 2016, read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016]

IN THE MATTER OF:

PATTABI ENTERPRISES --- **OPERATIONAL CREDITOR**

Versus

BLUE PARK SEA FOODS PRIVATE LIMITED

--- **CORPORATE DEBTOR**

IN THE MATTER OF:

Mr. RAJESH CHILLALE

Resolution Professional,

Blue Park Seafoods Private Limited,

B-713, Western Plaza, OU Colony,

H S Darga, Manikonda, Hyderabad – 500089

--- **APPLICANT/RESOLUTION PROFESSIONAL**

Date of Order: 07.05.2024

CORAM:

SHRI RAJEEV BHARDWAJ – MEMBER (J)

SHRI SANJAY PURI – MEMBER (T)

Counsels Present:

For the Applicant : Mr. Bendi Raviteja

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ORDER
(Per : Bench)

1. The present Application has been filed under section 30(6) of the Insolvency & Bankruptcy Code, 2016 (“Code”) read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by Mr. Rajesh Chillale, RP/Applicant on behalf of M/s. Blue Park Seafoods Private Ltd. (‘Corporate Debtor), seeking approval of Resolution Plan submitted by Kineta Global Limited (‘successful Resolution Applicant’) and approved by the Committee of Creditors (‘CoC’) with 100% votes in its 11th meeting of CoC held on 10.10.2023.
2. Briefly stated, the facts as averred in the application are as follows:
 - a) That by an order dated 26.10.2022, this Adjudicating Authority had initiated Corporate Insolvency Resolution Process against the Corporate Debtor (M/s. Blue Park Seafoods Private Ltd) and Mr. Popat Mayur Rajendrakumar was appointed as the Interim Resolution Professional (IRP) in the matter.
 - b) That Public Announcement in the matter for inviting the claims from the Creditors of Corporate Debtor was made on 28.10.2022 by the IRP in Form- A in “Times Of India (English language) and in Rayalaseema Samayam (Telugu Language).

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- c) That, pursuant to Public Announcement dated 28.10.2022, the erstwhile IRP has inter-alia received and collated claims from the Creditors of the CD and constituted the CoC on 19.11.2022.
- d) That the first CoC meeting was held on 25.11.2022, where the IRP was not confirmed as the Resolution Professional. Hence, this Authority vide its order dated 14.12.2022 appointed the applicant as the Resolution Professional of the Corporate Debtor.
- e) That in 2nd CoC meeting held on 27.12.2022, RP apprised the CoC as to appointment of Two Registered Valuers on 15.12.2022. Further the Applicant apprised the CoC regarding Appeal preferred by Hemanth Naga Kumar Nerella (Suspended Director) against this Hon'ble Tribunal Admission Order before the Hon'ble NCLAT, Chennai bench. Pursuant to the approval of the CoC, the Applicant published on 08.12.2022 a public announcement in Form G inviting Prospective Resolution Applicant ("PRA") to submit EOI, in Business Standard and Eenadu All AP and All Telangana editions, which was republished on 18.01.2023. The last date for submission of EOI was 12.01.2023, which was further extended to 27.01.2023.
- f) That in 3rd meeting of CoC, held on 21.01.2023, the Resolution Professional apprised the CoC that an Application No. IA(IBC)/44/2023 under section 19(2) has been filed on 19.01.2023 before this Authority

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against the suspended directors for non-cooperation. Further, the applicant put forth a draft Request for Resolution Plan (“RFRP”) before the CoC members for their perusal. Also, Mr. Hemanth Naga Kumar Nerella (Suspended Director) apprised the CoC that power bill for the month of November 2022 and December 2022 are pending and asked the members to arrange for the payment of the same.

g) That in the 4th CoC meeting held on 07.02.2023, the applicant placed before the CoC the provisional list of PRAs issued in terms of Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation 36A (10), which included 7 applicants. Mr. Hemanth Naga Kumar Nerella (Suspended Director) was declared ineligible as he had not deposited the EMD and the CoC refused to relax the criteria. Further, in compliance with provisions of section 25(2) (h) of the Code read with Regulation 36A of the CIRP Regulations, the applicant placed before the CoC draft RFRP, which was approved with requisite majority. On 11.02.2023, the Applicant issued final list of PRA incompliance with Regulation 36A (12) of the CIRP Regulations, wherein 7 Applicants were declared eligible. The RP further apprised the CoC that RFRP, Evaluation Matrix & Information Memorandum was issued to all the PRA’s whose name was in the provisional list of PRAs on 06.02.2023. The last date for submission of Resolution Plans by the Prospective Resolution Applicants

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was 13.03.2023. Subsequently, Mr. Hemanth Naga Kumar Nerella (Suspended Director) deposited EMD of 1 Crore along with envelope titled Resolution Plan. The CoC refused to take his plan since his name was not there in the final list of PRAs and the same was intimated to him on 15.03.2023. The same has been captured in minutes of 5th CoC meeting held on 17.03.2023.

- h) That in the 6th CoC meeting held on 12.04.2023, the RP apprised the CoC that the envelope containing the Resolution Plans received from the PRAs had been opened in front of CoC members in the 5th CoC meeting & the respective Prospective Resolution Applicant the contents there of were taken on record. Hence, the Plans were put under the process of verification for compliance in terms provision of Sec 30 of Code. Further, the RP informed the members of the CoC that Mr. Hemanth Naga Kumar Nerella (Suspended Director) had approached the Hon'ble NCLT, Amaravati Bench, to challenge the rejection / non-acceptance of envelope containing Resolution Plan submitted by him, vide IA (IBC)No. 132 of 2023, which was allowed by this the Hon'ble Tribunal by Order dated 26.07.2023 and directed the Resolution Professional to place the Resolution Plan submitted by the applicant before the CoC for its consideration.

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- i) Furthermore, the CoC members were apprised that 180 days of CIRP will come to an end on 24.04.2023 and the Resolution Plans received are under active consideration and CoC may take time to conclude the appraisal of the Resolution Plans. After due discussion, the members of CoC decided to make an Application before the Hon'ble Tribunal seeking extension of CIRP by another 90 days under section 12 of the Code. The same was allowed by this Authority vide order dated 27.04.2023 in IA No. 167/2023 and the extended CIRP date to 22.07.2023.
- j) That in the 7th CoC meeting held on 22.05.2023, the transaction audit report was placed before the CoC. That the RP filed avoidance application under sections 49 and 66 of the Code, vide IA (IBC) No. 214 of 2023, against the Suspended Directors. On 13.07.2023, this Hon'ble Tribunal set the Respondents exparte. Consequently, IA(IBC) 321 of 2023 was filed by the Respondents to set aside the exparte order, which was allowed by this Authority on 09.11.2023 and posted IA(IBC) No. 214 of 2023 for 13.12.2023.
- k) That in 8th CoC meeting held on 16.06.2023, all the PRAs were invited to the CoC meeting separately & the respective PRA's presented the salient features of the Resolution Plan and after discussing about the IBC compliance etc.


CoC requested PRA's to:



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- Improve the plan amount significantly.
 - Pay the actual CIRP costs.
 - Reduce the tenure of plan

After detailed discussion the PRAs were given time up to 24.06.2023 for submitting the revised Resolution Plan. RP also placed before the CoC a table describing the pending receivables from ITC Ltd. and even after repeated reminders from the RP to release the payments. However, they stated that they used the amount for renewal of licenses and shifting of their stocks to their other godowns. Further submitted that the renewal of licenses/compliance of Non-conformities (NC's) are mandatory for export of their processed stocks, hence they spent those amounts. They spent the amount bonafidely to ensure their stocks are safeguarded. An IA(IBC) No. 362 of 2023 has been filed against ITC Ltd, directing them to remit the outstanding amounts amounting to Rs.17,83,847, which is still under consideration before this Authority. It is averred that notice No.SE/O/VJA/SAO/JAO-HT/R2A9/D No. 497/23 dated 24.04.2023 from electricity department for disconnection was received by the RP & the same was suitably replied vide RP letter dated 29.04.2023. Further, CoC advised RP to explore with Electricity Department for the waiver of minimum mandatory

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electricity charges from the date of disconnection of power. As the matter stood, M/s. Bayfresh Inc. filed an IA(IBC) No.223 of 2023, to consider the claim of USD 532,000 amounting to Rs.4,35,38,880/- as FC and consequently to re-constitute the Committee of Creditors by including the Applicant as a member of the Committee of Creditors with voting rights proportionate to the debt amount.

- 1) That in the 9th CoC meeting held on 08.08.2023, the RP apprised the CoC members that a circular Resolution was moved on 13.07.2023 for approval of CoC for making an application before this Authority for exclusion of 116 days (20.03.2023 to 13.07.2023) from the CIRP Period which was lost due to Litigation in IA (IBC) No. 132 of 2023. CoC vide mail dated 15.07.2023 approved the Resolution with 100% voting rights. Consequently, IA (IBC) 312/2023 was filed and the same was allowed by this Authority vide Order dated 28.07.2023 and the new CIRP closure date is 15.11.2023. Further, with the consent of CoC the envelope, containing the Resolution Plan submitted by Mr. N. Hemanth Kumar (Suspended Director) was opened in the presence of Mr. Hemanth Kumar and other CoC members. A draft salient feature, compliance aspects of the Resolution Plan of Mr. Naga Hemanth Kumar were shared with CoC members for their observations. Findings & observations on the

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Resolution Plan of Mr. Hemanth Kumar was sent with a request to submit the clarifications by 18.09.2023. Mr. Hemanth Kumar submitted the clarifications on 18.09.2023.

- m) That in the 10th CoC meeting on 20.09.2023, with the consent of CoC, the envelope containing the Resolution Plan submitted by Mr. N. Hemanth Kumar (Suspended Director) was opened in the presence of Mr. Hemanth Kumar and other CoC members. RP vide email requested Mr. Hemanth Kumar to submit the final Resolution Plan keeping in view the compliance under IBC, CIRP regulations, RFRP dated 07.02.2023 and the observations of the CoC / RP mail dated 08.09.2023 made therein & requested to submit the same by 29.09.2023. Mr. Hemanth Kumar submitted the final Resolution Plan on 29.09.2023. RP shared with the CoC members the Revised Resolution Plans of all 4 Resolution Plans of all the PRA's 29A Due Diligence Report & Compliance certificates on the plans.
- n) Further, the successful resolution applicant had also submitted undertaking dated 24.06.2023, specifically in relation to CIRP Cost and another undertaking, dated 29.09.2023, acknowledging Resolution Plan and Financial Plan therein as unconditional and irrevocable in relation to certain clauses of the Resolution Plan.

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- o) On 10.10.2023, the RP convened the 11th CoC meeting. The Resolution Plan submitted by M/s Amaravai Acqa Exports Pvt. Ltd., in consortium with Cofoods Processors Pvt. Ltd. and M/s Kineta Global Limited, was placed before the CoC for voting. The Resolution Plan submitted by M/s Kineta Global Limited was approved by the CoC which was put for voting in 11th CoC meeting and voting timelines commenced on 12.10.2023 and concluded on 10.11.2023.
- p) It is pertinent to note that the Resolution Applicant deals in export and import of minerals and metals, generation of thermal and solar energy, having international presence. The Group has exported approximately 4.00 million tonnes of Iron ore/Iron ore pellets I Manganese ore to China's major steel producers. Further, Company's promoters and their team has good network with farmers since their COO has managed an Agri Complex with farmers' network of more than 50000 in Krishna, Godavari and Guntur districts. Therefore, due to their rich experience and knowledge bank Kineta Global Limited is confident of managing the farmers for uniform and continuous supply of raw material to factory. The Management of Kineta Global Limited intends to spread its wings into aqua complex by acquiring M/s. Blue Park Sea foods Pvt., Ltd.

Financial key features of the Resolution Plan are tabulated below:

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Category	Claim			Plan amount, priority & order of distribution	From the NCLT approval date		(% of recover in terms of amount claimed)
	Claimed	Admitted	Under verification		Within 45 days	Within 90 days	
Secured Financial Creditors	114.13	114.13	-	12.78	4.50	8.28	11.20%
Unsecured Financial Creditors	4.38	-	4.38	-	-	-	0.00%
Workmen dues	-	-	-	0.20	-	0.20	
Operational Creditors	5.41	1.27	4.14	0.05	-	0.05	0.92%
Statutory dues	27.40	0.09	27.32	0.05	-	0.05	0.18%
Total Payments to Creditors	151.33	115.48	35.55	13.08	4.50	8.58	9.30%
Insolvency Resolution Process costs				1.80	1.80	-	
Towards repairs & capital expenditure & working capital				6.00	-	6.00	
Total				20.88	6.30	14.58	

(Rs. In Crores)

Sources of funds	1 st tranche within 45 days from the date of NCLT order	2 nd tranche within 90 days from the date of NCLT order	Total
Available Cash/bank balance	0.50	0.58	1.08
Realisation of loans and advances	5.80	4.00	9.80
Associates / promoters	-	4.00	4.00
Total	6.30	8.58	14.88

q) It is averted that on 10.11.2023, Letter of Intent was issued by the Resolution Applicant to the Successful Resolution Applicant ("SRA"),

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- i.e., Kineta Global Limited. The SRA has duly accepted and acknowledged the terms and conditions of the letter of Intent.
- r) It is averted that the Applicant in its capacity as the Resolution Professional states that the approved Resolution Plan meets all requirements envisaged under the Code and the Rules/Regulations made there under. In this regard the Applicant is hereby placing on record a Compliance Certificate dated 16th November 2023 in Form H, as required under Regulation 39(4) of the CIRP Regulations
- s) It is averred that the Applicant, has received Rs.1,00,00,000/- from the Resolution Applicant as and by way of EMD at the time of submission of Resolution Plan.
- t) In compliance with RFRP & Letter of Intent dated 15.11.2023, the Successful Resolution Applicant submitted the Performance Guarantee in the form of Bank Guarantee (“PBG”) dated 15.11.2023 for an amount of Rs. 3,00,00,000/- pursuant to approval of Resolution Plan by the CoC in consonance with the terms of the RFRP & letter of Intent dated 15.11.2023. This PBG is valid up to 15.11.2024 & claim period up to 13.02.2025. Canara Bank is the Guarantor Bank and PBG is unconditional and irrevocable as per the terms of the RFRP. Since PBG has been received, the Applicant will take steps to refund the EMD amount of Rs. 1 Crore to the Successful Resolution Applicant.

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- u) It is averred that an IA for extension of 14 days of CIRP Period of CD has also been filed before this Authority on 14.11.2023 by the Applicant as the last date for closure for CIRP was 15.11.2023. The Applicant has preferred this Application in furtherance to his duties as the Resolution Professional of the CD and has complied with all the applicable regulations towards the discharge of my functions as the RP of the CD. The Applicant further submitted that the Resolution Plan has been approved by the requisite majority of the CoC.
- v) It is averred that the CoC with 100% voting power voted in favour of the Resolution Plan submitted by M/s. Kineta Global Limited under section 30(4) of the Code and the subject Application is filed for approval of Resolution Plan by this Authority. It is submitted that approval of Resolution Plan by the Authority is a condition precedent for implementation of the Resolution Plan and only after such approval the terms of Resolution Plan can be implemented. It is further submitted that, proceeding under the Code are to be conducted in a time bound manner with an aim to maximize the value of the assets of the CD. Hence this Application.
3. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.

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4. 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.

5. 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:

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- (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.
6. 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.”*
7. 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

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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.

8. 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.
9. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through registered valuers and the Liquidation value is Rs.9.97 crore and the Resolution Plan offers Rs.20.88 crore
10. 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

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implementation of Resolution Plan. No objection has been filed by anyone in this regard.

11. 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.
12. 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.
13. 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

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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).”


14. 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

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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, **IA (IBC)/407/2023 in CP (IB) No.77/9/AMR/2021 stands allowed** in terms of the aforesaid discussion.



SANJAY SURI
MEMBER (TECHICAL)



RAJEEV BHARADWAJ
MEMBER (JUDICIAL)

Reddy Pavani, LRA.