

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA(IBC)/325/KOB/2023

(U/s 30(6), 31 of IBC, 2016)

IN

CP(IBC)/1/KOB/2021

In the matter of:

***M/s Nucleus Premium Properties
Private Limited***

Memo of Parties:

1. Dileep K P

Resolution Professional of M/s
Nucleus Premium Properties Private
Limited.

IBBI/1PA/IP-001/IP01310/2018-
2019/12220, Veluthedath House,
Ponnuruni, Vytilla P O, Kochi, Pin.
682019

...Applicant

Order delivered on: 22.12.2023

Coram:

Hon'ble Member (Judicial) : TMT. Justice (Retd.) T. Krishna Valli

Hon'ble Member (Technical): Shri. Shyam Babu Gautam.

Appearances:

For the Applicant : Mr. N R Krishnan Unni, CS

Mr. Dileep K P, RP

INTERIM ORDER

Per: Shyam Babu Gautam Member (Technical)

1. This application is filed under section 30(60) and section 31 of the Code for the approval of a resolution Plan in respect of M/s Nucleus Premium Properties Private Limited (hereinafter referred to as 'Corporate Debtor' or 'CD'). The Resolution Professional filed the present application on 01.08.2023 for approval of the Resolution Plan, which was approved by the Committee of Creditors (hereinafter referred to as the 'CoC') with a 100 per cent in its 12th CoC held on 28/07/2023.
2. The facts as narrated in the application are summarised hereunder:
3. The underlying Company Petition CP(IBC)/01/KOB/2021, filed by Mr Anoop John & 3 others against the Corporate Debtor under Section 7 of the Code, was admitted by this Tribunal and Corporate Insolvency Resolution Process initiated against the Corporate Debtor on 18.11.2021. Mr Dileep K P, IBBI/1PA/IP-001/IP01310/2018-2019/12220 was appointed as the Interim Resolution Professional (hereinafter referred to as 'IRP'). The CoC in its first meeting held on 30.12.2021 decided to appoint the IRP as the Resolution Professional ('RP').
4. The Corporate Debtor has been undertaking Real Estate Projects which were delayed and under various stages of construction. The

RP admitted 238 claims till 90 days which is the maximum period allowed for submission of claims as follows:

Sl. No.	Creditors	No. of Claims admitted	Amount of Claim admitted Rs in crore
1	Secured financial creditors (other than financial creditors belonging to any class of creditors)	1	1.41
2.	Unsecured Financial Creditors belonging to any class of creditors	199	111.89
3.	Operational Creditors (Employees)	7	0.35
3.	Operational Creditors (Government)	3	14.61
4.	Operational Creditors (other than Workmen and Employees and Government Dues)	27	10.36
	Total	237	138.62

5. The constitution of CoC consists of 199 homebuyers with a 98.75% voting share and one financial creditor, State Bank of India with a 1.25% voting share. Homebuyers are represented by the Authorised Representative, Mr Mohan TS, an Insolvency Professional approved by NCLT on 17.02.2022.

6. The CIRP commenced on 18.11.2021, but due to the large number of claims from homebuyers and on account of the Covid third wave, the CIRP was extended. An overall extension of 330 days in the CIRP period besides 120 days of the exclusion period was sought.
7. During this time the Resolution Professional had invited Expression of Interest from Prospective Resolution Applicants by public announcement in Form G. Accordingly the Resolution Professional received two bids, one from the Ex-promoter/suspended director of the Corporate Debtor (who was found qualified as per Section 240 A of the Code being a SME unit), subsequently did not submit any Resolution Plan. After the third CoC meeting a second EOI application was invited by giving an advertisement on 26.04.2022, but no fresh EOI's were received.
8. Then the request of a Resolution Plan was issued to the Sole Prospective Resolution Applicant, Mr Sumit Khanna requesting to submit the Resolution Plan by 18.06.2022. Draft Resolution Plan submitted by the Resolution Applicant which was subject to a series of Project wise discussions but the Resolution Plan was rejected in the 6th CoC meeting held on 23.09.2022 with 100% voting rights.
9. In the 7th CoC held on 28.09.2022 decided to seek the proposal for project-wise resolution and this Tribunal approved the

application for attempting Project Wise resolution as of the view that there may be a chance of successful resolution of the Corporate Debtor as per order dated 04.11.2022. Thereafter on 8th CoC which was held on 14.11.2022 based on the approval by 76.36% voting share of home allottees decided that the Resolution Professional to publish one more Form G inviting EOI. EOI was published on 15.11.2022. Thus, Resolution Professional received two EOI's, 1) M/s Buildwell and 2) M/s BR Nirman.

10. Both the proposed Resolution Applicants satisfied the eligibility criteria under Section 29A of the Code and detailed Resolution Plans were received. Both the Resolution Plans were subject to deep scrutiny but the project-wise Resolution Plan submitted by Raymound Project, Riva Apartments and Eleganza Projects did not comply with the mandatory provisions of the Code and various regulations and amendments thereunder. The reason for the non-acceptance of the Resolution Plan was communicated to Resolution Applicants as per a letter dated 14.01.2023. Thereafter the Resolution Plans submitted by the aforesaid Resolution Applicants were found in compliance with the Code, which was circulated to all homebuyers and project-wise meetings conducted from 18.01.2023 to 22.01.2023 to negotiate the terms and conditions. Based on the outcome of these meetings, both the Resolution Applicants modified and resubmitted the

same on 26.01.2023 which was circulated among the homebuyers on the same day. Both the Resolution Plans were placed for e-voting from 28.01.2023 to 29.01.2023.

11. With regard to Plan A- (Buildwell), 41.99% of home allottees who participated in the voting agreed in favour of Plan A, while 57.58% disagreed and 0.43 who participated abstained from voting. In the case of Plan B- (P.S.Baburam, BR Nirman), 0.87% of home allottees who participated in voting agreed in favour while 99.13% disagreed. The Authorized Representative cast his vote in terms of Section 25 (3A). In terms of Regulation 39(3)(B) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, CoC decided that one more e-voting of home allottees to be conducted on Plan A- Buildwell who received the highest votes on 02.02.2023 to 03.02.2023. However, the Resolution Applicant of Plan A-Buildwell failed to qualify for the re-voting also.
12. Accordingly, this Tribunal ordered the liquidation of the Corporate Debtor vide IA(IBC)/74/KOB/2023 on 17.03.2023. Mr Dileep K P, a Resolution Professional was appointed as the Liquidator. While the liquidation process was going on, Raymount and Riva Project Allottees Association along with a group of home allottees have preferred an appeal in Hon'ble NCLAT Chennai against the order of liquidation. The Appellants pleaded for setting aside the order of liquidation and allowing

the CoC to reconsider the modified Resolution Plan submitted by M/s Buildwell. The Hon'ble NCLAT Chennai ordered to keep the order of liquidation in abeyance and directed to consider the revised Resolution Plan submitted by M/s Buildwell by the CoC.

13. Accordingly, the modified Resolution Plan submitted by M/s Buildwell was kept for voting on 26.07.2023 to 27.07.2023. Out of 199 home allottees with voting rights, home allottees with 67.48% voted in favour of the Resolution. Home allottees with 18.82% voted against the Resolution Plan. Home allottees with 12.45% abstained from voting. Therefore, 78.19% of the home allottees by voting share who participated in the e-voting voted in favour of the Resolution Plan. 12th Coc held on 28.07.2023 voted in favour of the Resolution Plan with 100% voting.
14. As per the order of Hon'ble NCLAT, the order of Liquidation remains suspended till 02.08.2023. This application was filed by the Resolution Professional for the approval of the Resolution Plan on 01.08.2023.
15. The Successful Resolution Applicant had duly accepted the 'Letter of Intent' which was issued by the Resolution Professional as per the provisions of RFRP on 28.07.2023.
16. The Successful Resolution Applicant has provided a cash security deposit of Rs 26,16,035/- (Rupees twenty-six lakhs

sixteen thousand and thirty-five only) in the designated Resolution Account, copy of bank statement evidencing the same attested by SBI, Edapally Branch has been produced as Annexure E.

17. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, as follows:

Section of the Code/Reg.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes

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29A	Whether the Resolution Applicant is eligible to submit a resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority	Notarised affidavit in pages no.38 to 43	Yes
30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Notarised affidavit in pages no.38 to 43	Yes

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30(2)	Whether the Resolution Plan-		
	a) Provides for the payment of insolvency resolution process costs?	4.3.1	Yes
	b) Provides for the payment to the operational creditors?	4.3.2	Yes
	c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	NA	NA
	d) provides for the management of the affairs of the corporate debtor?	7.2	Yes
	e) provides for the implementation and supervision of the Resolution Plan	7.2.2	Yes

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	(f) contravenes any of the provisions of the law for the time being in force?	4.1.9	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?	4.1.10	Yes
	(b) has been approved by the CoC with 66% voting share?	NA	Yes with 100% vote
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	7.2.1, 7.2.2	Yes

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Regulation 35A	Where the resolution professional made a determination if the CD been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	6.2.(iii) 6.2.(iv) 6.2.(v)	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	4.3.2	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	4.3, 6.1	Yes

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Regulation 38(1B)	i. Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. ii. If so, whether the Resolution Applicant has submitted the statement giving details of such non implementation?		No NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?	7.1	Yes,

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	(b) for the management and control of the business of the corporate debtor during its term?	7.2	Yes
	(c) adequate means for supervising its implementation?	7.2.2	Yes
Regulation 38(3)	Whether the resolution plan demonstrates that		
	a) it addresses the cause of default?	3.1.2	Yes
	b) it is feasible and viable?	4.1.10	Yes
	c) it has provisions for its effective implementation?	7.2, 7.2.2	Yes

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	(d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	7.2.4 4.1.5	Yes Yes
Section 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	6.2	Yes

Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	7.5	Yes
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18. As required by Section 30(1) read with Regulation 39(1)(a) of the CIRP Regulations, the Applicant submits that the Resolution Applicant has submitted a certificate of eligibility under Section 29A of the Code vide notarized affidavit dated 29.11.2022. In terms of Regulation 39(1)(c) of the CIRP Regulations, an undertaking has been submitted by the successful Resolution Applicant, disclosed on page 99 of the application.

19. The applicant has filed a Compliance Certificate in prescribed form i.e., Form "H" in compliance with regulation 39(4) of the Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons) regulations 2016, along with copy of Bank statement of receipt of performance security as required under regulation 36B(4A) is produced as Annexure E.

20. The Resolution Applicant requests, proposes and prays for the following reliefs and concessions to be granted to the Corporate Debtor and/or the Resolution Applicant, as the case may be, on the Approval Date.

Sl. no	Relief/Concessions/Waiver sought	Status
1.	All debts and dues, liability or obligations which are included in the Resolution plan shall be deemed to have been irrevocably waived, and permanently extinguished and written off in Full, with effect from the effective date.	
2.	On effective date, any claims by any person whether submitted to Resolution Professional or not, admitted by Resolution Professional or not, due or contingent, asserted or un-asserted. crystallised or uncrystallised, known or unknown, secured or unsecured. disputed or undisputed or pending adjudication in any forum, present or future against the Corporate Debtor accrued as on the insolvency commencement date against the Corporate Debtor, whether arising under the subsisting lease/sub-lease, consents, licenses,	

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	<p>approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or any contractual arrangements entered into by the Corporate Debtor, shall notwithstanding any provision to the contrary in their terms, stand extinguished without any recourse</p>	
3.	<p>With respect to all the dues including taxes/ cess/ interest 1' penalty and other liabilities outstanding towards GST, VAT. Service Tax. Sales Tax. Income Tax. RoC or any other statutory authority its presumed that the respective Statutory Authorities have submitted their claim to the Resolution Professional as part of the CIRP process and all such existing liabilities shall be dealt with as provided in this Resolution Plan. No new such liability shall arise on the Resolution Applicant for the period prior to the Effective Date.</p>	
4.	<p>To seek the benefit of all Exemptions under Income Tax. GST. VAT, Service Tax etc from the appropriate authorities as available to Companies that have undergone Corporate Insolvency Resolution Process and a Resolution Plan has been approved by the Hon'ble NCLT.</p>	

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5.	Any legal action of any kind or nature pending the occurrence of the Effective Date, no creditor or stakeholder shall be entitled to institute or continue any suits or proceedings including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or authority against the Corporate Debtor or take any action to foreclose, recover or enforce any security interest created by the Corporate Debtor with respect to the Claims in respect of its property or otherwise including but not limited to the Litigation cases as mentioned in the Information Memorandum.	
6.	The Allottees shall withdraw all existing claims filed in any court of law and all orders/decrees passed by any court of law shall stand nullified and all Allottees shall be dealt with in accordance with this Resolution Plan.	
7.	The Corporate Debtor should not be subject to any claims of subrogation or have any of its assets attached or frozen or garnished or any of them being subject to restraint or restriction of any manner, in each case including whether provisionally or otherwise.	
8.	The Allottees to accept the new time period for completion of the construction of the projects of the Corporate Debtor. as contemplated under the Resolution Plan.	

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9.	To absolve the Resolution Applicant from any liability arising due to the outcome of any legal proceeding on any legal cases pending against the Corporate Debtor as on the Effective Date.	
10.	Extinguish all liabilities in relation of corporate guarantees, indemnities etc provided by the Corporate Debtor as on the Effective Date.	
11.	The Resolution Applicant shall neither be liable to honor unevolved bank guarantee/letters of credit, nor shall it be obliged to renew the bank guarantee/letters of credit or provide any assistance to the respective creditors to contest or defend any claims that are raised by the beneficiary. The satisfaction or payment by the respective creditors upon receipt of any claims in connection with the unevolved bank guarantees/letters of credit shall not be construed as a default on part of the Corporate Debtor and any modifications required in the bank guarantee/letter of credit documents to reflect such arrangement shall be made by the respective creditors.	

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12.	The Resolution Applicant and Corporate Debtor shall not be liable for any payments against any contingent liability whether mentioned in the Information Memorandum or not included in the Information Memorandum but not limited to liabilities on account of bank guarantees given to customers or any other entity, other than as proposed in this Resolution Plan	
13.	Any claims made under any guarantees issued by the Corporate Debtor on behalf of any third party shall also stand extinguished as a part of this Resolution Plan and the beneficiaries of such guarantees shall be expected to recover the monies with respect to un-invoked guarantees from the principal borrower and for any shortfall, they shall not have any recourse against the Corporate Debtor and for the Resolution Applicant.	
14.	All claims and rights against the Corporate Debtor by any Related Party to the Corporate Debtor, which are not expressly provided for in this Resolution Plan, shall stand irrevocably and unconditionally extinguished.	
15.	All claims and rights of the erstwhile Shareholders or Directors against the Corporate Debtor shall stand irrevocably and unconditionally extinguished.	

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16.	All existing encumbrances, charges, security interest etc. with respect to the Claims in respect of the assets of the Company and or otherwise shall stand cancelled and discharged.	
17.	Revocation of all power of attorneys provided by the Corporate Debtor to any person as on the effective date.	
18.	All outstanding negotiable instruments issued by the Corporate Debtor including demand promissory notes, post-dated cheques, bills of exchange, letters of credit etc. shall stand terminated and the Liability of the Corporate Debtor under such instruments shall stand extinguished other than those issued by Resolution Professional during the CIRP process and disclosed to Resolution Applicant.	
19.	The Corporate Debtor, Resolution Applicant, and their Board of Directors (appointed after Effective Date) shall not be liable for any action taken pursuant to bouncing of cheques issued by the earlier management/promoter of the Corporate Debtor and accordingly all such payments shall be deemed to be settled in terms of this Resolution Plan by virtue of settlement of dues of the Operational Creditors or creditors in class as the case may be.	

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20.	All actions with regard to the assets/claims/rights etc as mentioned in the Balance Sheet of the Corporate Debtor. as well as off balance sheet items. as on the Effective Date shall be the assets/claims/rights of the Resolution Applicant and shall be dealt with at its sole discretion.	
21.	Subject to applicable regulations and bye laws, the Resolution Applicant shall be allowed to undertake redesigning of the project sites, based on its own viability assessments.	
22.	Subject to applicable regulations and bye laws, any additional FAR on any basis/Ground coverage relating to the project sites permitted under the master plan shall vest with the Corporate Debtor and no further payments shall be payable to authority for such additional FAR/ Ground coverage or height coverage.	
23.	Any event of default having occurred on part of the Corporate Debtor under any of the financing documents entered into by the Corporate Debtor on its own behalf or on behalf of subsidiaries (if any), joint ventures or associates to secure or guarantee any of their liabilities, prior to the Effective Date, shall be waived in entirety and all rights under the existing finance documents in relation thereto shall stand extinguished.	

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24.	No consequence of liability arising out of any criminal not done by the Corporate Debtor and/or its management shall fall upon the Resolution Applicant or any employees, directors, representatives of Resolution Applicant and the Corporate Debtor	
25.	Neither shall the Resolution Applicant nor the Corporate Debtor nor their respective directors, officers, consultants, and employees to be appointed after the Approval Date be liable for any violations, liabilities, penalties or lines with respect to or pursuant to the Corporate Debtor not having in place the requisite licenses and approvals required to undertake its business as per Applicable Laws and the Resolution Applicant seeks a time period of 12 months from the Effective Date, to ensure renewal of such consents/licenses and approvals.	
26.	Kerala Real Estate Regulatory Authority [K-RERA Authority) shall extend the registration of the projects in in respect of which the K-RERA registration has lapsed. Till the time the registration of the project is extended by K—RERA. construction work shall be allowed to continue, including advertisement etc. without any hindrance or obstruction.	
27.	Exemption from compliance of extinguishment of the shares of the current shareholders of M/s Nucleus Premium Properties Private Limited.	

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28.	Allow Fresh allotment of shares in the name of Resolution Applicant and persons nominated by the Resolution Applicant.	
29.	ROC may be directed to approve the appointment of new Directors of the Company, who are proposed by the Resolution Applicant alter the Approval of this Resolution Plan by the Adjudicating Authority and the mandatory compliance for the change of Directors may be waived off.	
30.	To permit amendment of the Constitutional documents of the Corporate Debtor.	
31.	That all the liability of the Corporate Debtor for any offence committed prior to the commencement of the Corporate Insolvency Resolution process shall cease and the Corporate Debtor shall not be prosecuted for any such offence from the date the Resolution Plan has been approved by the Adjudicating Authority and No action shall be taken against any property of the Corporate Debtor in relation to any offence committed prior to the commencement of the Corporate Insolvency Resolution Process of the Corporate Debtor.	

21. It is directed that any relief sought in the resolution plan, where the contract/ agreement/ understanding/ proceedings/ actions/ notice etc. is not specifically identified or is for future and contingent liability, is at this moment not acceded to.

DETAILS OF RESOLUTION PLAN/PAYMENT SCHEDULE

22. The applicant submits the relevant information with regard to the amount proposed to be paid by the Resolution Applicant, under the said resolution plan is tabulated as under:

Description	Amount	Proposed payments
Insolvency Resolution Cost	Rs.93,61,000/-	Within 3 months of approval date (Date of order of NCLT)
Amount payable to secured financial creditor (State Bank of India)	Rs.1,41,58,032/-	Within 6 months of approval date (Date of order of NCLT)
Amount payable to operational creditors - Employees	Rs. 4,54,815/-	Within 6 months of approval date (Date of order of NCLT)
Amount payable as settlement of claims of Verdant allottees	Rs.21,86,500/-	Within 18 months of approval date (Date of order of NCLT)
Total	Rs.2,61,60,347/-	

23. The Resolution Professional further submitted that the contents of the Resolution Plan submitted by the Resolution Applicants were found to comply with the provisions of the Code and various regulations thereunder.

Findings:

24. In light of the submissions made and a comprehensive examination of the Resolution Plan submitted by the Resolution Professional, numerous inadequacies have been identified therein. It is imperative to acknowledge that the

Corporate Debtor comprises 199 home buyers, and for a successful resolution for the Corporate Debtor, we are directing the Committee of Creditors to consider the following aspects:

- I. The CoC is directed to reconsider the question of feasibility and viability of the Plan
 - II. The CoC will relook into the matter concerning the compliance of the resolution plan with Section 30(2) of the Code, particularly with regard to the annulment of the registration of the land deeds of the homebuyers.
 - III. The CoC shall reconsider the question as to whether the Resolution Applicant is capable of implementing the Plan to the extent of his net worth.
25. Hence putting in mind the time-bound process of CIRP, the CoC shall consider the aforementioned aspects and submit the decisions/report before this Tribunal within 3 weeks from the date of receipt of this order.
26. In view of this order, all the connected interlocutory applications bearing **IA(IBC)/349/KOB/2023, IA(IBC)/348/KOB/2023, IA(IBC)/351/KOB/2023, IA(IBC)/363/KOB/2023, IA(IBC)/381/KOB/2023, IA(IBC)/324/KOB/2023, IA(IBC)/485/KOB/2023, IA(IBC)360/KOB/2023** which has been reserved, is de-reserved accordingly.

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27. The Resolution Professional/Applicant herein shall forthwith send a copy of this order to the CoC and the Resolution Applicant for necessary compliance.
28. The registry is also directed to forthwith send a copy of this order to the CoC and the Resolution Applicant.
29. The certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
30. List the above IA(IBC)/325/KOB/2023 for further proceedings on 19.01.2024.

**SHYAM BABU
GAUTAM** Digitally signed by
SHYAM BABU GAUTAM
Date: 2023.12.22
14:10:31 +05'30'

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

**T.KRISHNAVA
LLI** Digitally signed by
T.KRISHNAVALLI
Date: 2023.12.22 14:10:16
+05'30'

**TMT. JUSTICE T KRISHNA VALLI
(MEMBER JUDICIAL)**

Dated this the 22st day of December 2023.

Krishna