

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
(SINGLE BENCH)

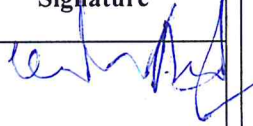
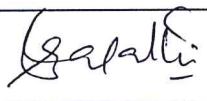
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PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 31.01.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 69/2020 in CP (IB) No. 499/7/HDB/2018
NAME OF THE COMPANY	Vaksh Steels Pvt Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Vaksh Steels Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):


Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
KMIC PRASAD	RP	9866512532	
JVL Bhavali (For RP)	Adv	9958601847	

Counsel for Respondent(s):

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

Y. SURYANARAYAN
Adv.
for RP

9898866556



ORDER

IA No.69 of 2020 is listed for orders. Orders are passed vide separate order.


Member (J)

Karim

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I**

IA No. 69 of 2020

In

CP (IB) No.499/7/HDB/2018

*Application filed U/S 30(6) R/W Regulation 39 of IBBI (IRPCP)
Regulations, 2016*

**IN THE MATTER OF
STATE BANK OF INDIA**

Versus

M/S. VAKSH STEELS PRIVATE LIMITED

**Kalvakolanu Murali Krishna Prasad
Resolution Professional for
M/s Vaksh Steels Private Limited
R/o H.No. 8-27, Plot No. 106
Mythripuram Colony Jilleguda
Vyshalinagar PO, Hyderabad**

....Applicant

Date of order: 31.01.2020


Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Appearance:

**For Applicant: Shri K.M.K. Prasad, Resolution
Professional along with Ms JVL Bharati,
Advocate**

Heard on: 21.01.2020 and 27.01.2020



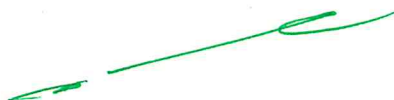
PER: SHRI RATAKONDA MURALI
MEMBER (JUDICIAL)

PRELUDE

- 1.1 Under consideration before us is the Interlocutory Application filed by the Applicant / Resolution Professional under Section 30 (6) seeking approval of the Resolution Plan under Section 31(1) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "Code") R/w Regulation 39 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 in respect of M/s Vaksh Steels Private Limited/ Corporate Debtor.

AVERMENTS

2. The averments apropos to the Application, in brief are:-
- 2.1 The Company Petition bearing CP(IB) No. 499/7/HDB/2018 filed by State Bank of India / Financial Creditor under Section 7 of Insolvency & Bankruptcy Code (IBC) was admitted by this Tribunal on 14.02.2019 and Corporate Insolvency Resolution Process (CIRP) commenced against M/s Vaksh Steels Private Limited / Corporate Debtor by appointing Shri Kalvakolanu Murali Krishna Prasad as Interim Resolution Professional (IRP), who was later confirmed as Resolution Professional.
- 2.2 On his taking over as IRP, the Applicant herein issued public announcement in Financial Express (English) & Nava Telangana (Telugu) on 16.02.2019 inviting claims from creditors and the last date for receipt of claims was fixed as 28.02.2019.



- 2.3 The Applicant after collating and verifying the claims, constituted Committee of Creditors with State Bank of India as lone member of CoC with 100% voting share.
- 2.4 The 1st CoC meeting was convened by the Applicant on 13.03.2019 and in the 2nd meeting held on 25.03.2019, the Applicant was confirmed as Resolution Professional. Action was initiated to appoint two Registered Valuers each for different class of assets viz (a) Land & Buildings (b) Plant and Machinery on 29.03.2019 for ascertaining the fair value and liquidation value of the fixed assets.
- 2.5 The Resolution Professional also carried out publication of invitation for Expression of Interest (Eoi) in Form G in Financial Express and Nava Telangana dated 30.04.2019.
- 2.6 It is stated, Information Memorandum (IM), Request for Resolution Plan (RFRP), Evaluation Matrix, duly approved by the CoC was issued to prospective Resolution Applicants on 29.06.2019.
- 2.7 IA No. 350/2019 was filed by Resolution Professional seeking directions for considering the guarantor's property mortgaged as collateral security (situated on front side of the industrial unit on which part of CD's assets are located) together with CD's property as part of CIRP asset and for making a joint asset for further processing under CIRP. While this IA was pending adjudication, Shri Varun Agarwal / Guarantor filed Writ Petition and sought interim stay order from Hon'ble High Court on 19.06.2019. This fact was brought to the attention of this Tribunal when the matter came up on 27.06.2019 and also to the knowledge of prospective Resolution Applicants. The Resolution Professional had

withdrawn this IA on 19.08.2019 according on the directions given by Hon'ble High Court to consider only CD's property and exclude personal property of aforesaid guarantor.

- 2.8 The Resolution Professional had received two resolution plans i.e. M/s SVSS Commercial Pvt Limited and M/s Kamani Metalliks Private Limited within the stipulated time i.e. 29.06.2019 and placed before the CoC for deliberations during 7th and 8 the CoC meetings held on 06.08.2019 and 11.10.2019 respectively. The Resolution Professional on the instructions of CoC, directed the Resolution Applicants to revise their plans with improved payments to secured creditors.
- 2.9 The 9th CoC was held on 05.11.2019. The revised resolution plans submitted by the resolution applicants was deliberated upon. However, the CoC had observed that in the revised plan submitted by M/s Kamini Metalliks Pvt Limited, the payments offered to the secured creditors (SBI) is much lower than the original resolution plan submitted by the said Resolution Applicant and as such rejected the plan with 100% voting share. Further CoC directed the other Resolution Applicant M/s SVSS Commercial Private Limited to submit revised plan with improved offer and sought 10 days' time.
- 2.10 The CoC further observed that by virtue of stay order passed by Hon'ble High Court, one month time was lost in litigation that caused delay in processing the Resolution Plans. As per the decision of CoC in its 9th CoC meeting held on 05.11.2019, Resolution Professional moved IA No. 1022 of 2019 seeking extension of 60 days of CIRP period, which was allowed

by this Tribunal on 27.11.2019 directing the Resolution Professional to complete the CIRP process within mandatory period of 330 days, which is due to expire on 10.01.2020.

- 2.11 In the interregnum, State Bank of India, has informed vide email dated 31.12.2019 that the loan accounts of M/s Vaksh Steels Private Limited have been assigned to PRUDENT ARC Limited which was also confirmed by PRUDENT ARC Limited, New Delhi vide email dated 31.12.2019 and that they have purchased the debt of the Corporate Debtor from SBI. Further it was also informed that PRUDENT ARC Ltd would replace SBI in the CoC of M/s Vaksh Steels Private Limited (Corporate Debtor). Subsequently, the Resolution Professional notified the change in the CoC of Corporate Debtor by filing memo dated 02.01.2020 along with Registered Assignment Agreement dated 31.12.2019 executed between the two parties.
- 2.12 The 10th CoC meeting was held on 03.01.2020, Resolution Plan submitted by SVSS Commercial Private Limited was deliberated upon and CoC was not satisfied with the amount of Rs. 5.52 crores offered to Secured Creditor as per the Resolution Plan and sought further improvement in the plan.
- 2.13 The second revised resolution Plan was submitted on 03.01.2020. It is submitted after further negotiations, the Resolution Applicant submitted Revised Final Resolution Plan on 04.01.2020 and CoC noted that the Resolution Plan proposed higher upfront payment and shorter payment schedule.



CONTOUR OF THE RESOLUTION PLAN

3. The prominent features of the Resolution Plan are detailed under para 3 (page No.7) of the Application. After evaluation of the Revised Plan dated 15.11.2019 and revised Final Resolution Plan submitted on 04.01.2020, the CoC passed a resolution approving Resolution Plan submitted by **M/s SVSS COMMERCIAL PRIVATE LIMITED / Resolution Applicant**, subject to the conditions stated under para 13 (page 9 of the Application).
- 3.1. The Resolution Applicant vide its letter dated 08/01/2020 has furnished the Bank Guarantee for Rs. 25.00 lakhs for a period of 3 months, with renewal clause as suggested and the details of bank guarantee are as under:

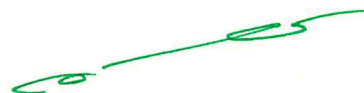
BG NO.	DATE	AMT	VALID UPTO
987GPGE200080003 Canara Bank, MJ Market, Hyderabad	08.01.2020	25.00 lakhs	08.04.2020

- 3.2. The Resolution Applicant sought certain reliefs and concessions under Clause 18. Desired Reliefs and Concessions as detailed at page no. 6 to 11 of the resolution plan for consideration of this Tribunal are as under:-
- a) To allow carrying forward of losses under Sec79, of IT Act, as per clause no 18 J, on page no. 8 of resolution plan.

- b) With regard to the other reliefs/concessions sought by the resolution applicant the CoC resolved that the resolution applicant may approach the concerned departments to obtain the said concessions/ reliefs, as per applicable laws without recourse to RP or COC.

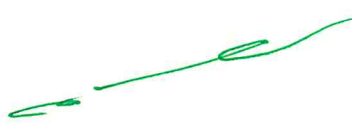
The Approved minutes of 10th COC meeting dated 3.11.2020 along the resolution plan dated 04.01.2020 are annexed and marked as annexure- 4 &5.

- 3.3 The amount offered to the secured financial creditors under the resolution plan as approved by COC is Rs.975.00 lakhs which is more than fair value and Liquidation value of CD's assets.
- 3.4 The Resolution Professional, hence prayed this Tribunal to approve the Resolution Plan of M/S SVSS Commercial Pvt. Ltd dated 04.01.2020, as approved by COC as per Sec 30 (4) with 100% voting share which envisages a total payment of Rs.10.10 crores to various stake holders, including Rs.9.75 Crores to Secured Financial Creditor i.e, M/s. Prudent ARC Limited, Rs. 0.05 crores to operational creditors and 0.30 crores towards CIRP cost, to be paid as under:
- a) Rs.5.60 crores shall be paid within 30 days from the vesting date
- b) balance Rs.4.50 crores shall be paid within overall payment period of 5 months from the vesting date.



- 3.5 A request has been made by the Resolution Applicant for return of BG/FD which is valid for a period 3 months for Rs.25.00 lakhs, given as performance security upon receipt of upfront payment of Rs.5.60 crores within 30 days from the vesting date (date of approval of resolution plan by AA).
- 3.6 The Resolution Professional also sought to consider the request of the Resolution Applicant allowing the Company under New Management, to carry forward the losses under Sec 79 of IT Act as stated under clause no 18 (J) at page no. 8 of resolution plan.
- 3.7 It is further apprised that the Resolution Applicant is proposing to appoint an independent Insolvency Professional as Monitoring Committee to supervise the implementation of the resolution Plan within 30 days from the date of approval by this Tribunal and sought appropriate direction in this regard.
- 3.8 The Resolution Professional has furnished certificate in Form-H as per Regulation 39 of CIRP Regulations, 2016 which is annexed as Annexure-6.

FINDINGS

4. We have heard the Counsel for Resolution Professional. This Application is filed under Sections 30 (4) and 31 (1) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "CODE") for approval of the Resolution Plan submitted by M/s SVSS Commercial Private Limited ("Resolution Applicant").
5. The Learned Senior Counsel for Applicant stated that, two Registered Valuers each for Land and Buildings (including Ac.5.00 Gts owned by Sri Varun
- 

Agarwal Guarantor and Director (Suspended Board) duly mortgaged to SBI) and for Plant & Machinery viz, Sri P. Lakshminarashimarao, & Shri AK Narayana Reddy Tirupathi and Sri Ramesh Kumar Pattisapu & Shri KR Veera Prathapa Reddy respectively were appointed on 29.03.2019 to determine the fair value and liquidation value of the assets of the Corporate Debtor. The Net Fair value of Machinery, 5 acres of Land owned by CD & Building was fixed at Rs. 900.58 lakhs and the Net Liquidation value at Rs.679.58 lakhs. In all, the Applicant conducted 10 CoC meetings. After granting extension of 90 days w.e.f. 13.08.2019, an application was filed for further extension of 60 days, which was allowed vide order dated 27.11.2019 directing the Resolution Professional to complete the CIRP within the period 330 days.

6. The REVISED FINAL Resolution Plan DATED 04.01.2020 submitted by M/s SVSS COMMERCIAL PRIVATE LIMITED ("Resolution Applicant") was approved by CoC with 100% voting in favour of it. The minutes of the 10TH meeting of the COC held on 03.01.2020 and 04.01.2020 is filed at page Nos 60-83. As seen from the Resolution Plan, the Fund will be infused by SVSS and its Directors from their own fund and borrowing. The list of Financial Creditors of the Corporate Debtor and their distribution of voting share is as under:-

Sl. No.	Particular	Infavour (%)	Against (%)	Not voted (%)
01	PRUDENT ARC LIMITED	100%	-	-

6. The amounts provided for the stakeholders under the Resolution Plan is as under:-

(Amount in crores)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors PRUDENT ARC LIMITED	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NA	NA
		(ii) who voted in favour of the resolution plan M/S. PRUDENT ARC LIMITED	40.22	40.22	9.75	24%
		Total[(a) + (b)]	40.22	40.22	9.75	24%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	Nil	Nil	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	Nil	Nil	Nil	NA
		(ii) who voted in favour of the resolution plan	Nil	Nil	Nil	
		Total[(a) + (b)]	NIL	NIL	NIL	NA

3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NA
		(b) Other than (a) above:				
		(i)Government	NIL	NIL	NIL	NA
		(ii)Workmen	NIL	NIL	NIL	NA
		(iii)Employees				
	(iv) Operational Creditors: (as per list)	34.30	20.54	0.05	0.24%	
	Total[(a) + (b)]	34.30	20.54	0.05	0.24%	
4	Other debts and dues		Nil	Nil	Nil	NA
Grand Total			74.52	60.76	9.80	15.04

7. The proposed timelines for completion of the funding by Resolution Applicant is as under:-

Particulars	Time from vesting date
Upfront cash payment (Initial/ Down payment) – Rs. 5.60 crores	Within 30 days (Rs. 0.50 crores equity and Rs. 5.10 crores as unsecured loan). The Bank Guarantee / Performance Deposit of Rs. 25 lakhs shall be released on payment of upfront amount.
Payment of CIRP cost	Within 30 days
Initial Payment to financial / Operational Creditors	Within 30 days
Balance payment of Rs. 4.50 crores to Financial / Operational Creditors	Within 05 months
Further payment for refurbishment and power deposit of Rs. 0.10 crores (infusion of unsecured loan) minimum amount	Within 12 months
Additional fund infusion for working capital of Rs. 0.20 crores as Unsecured Loan	Within 12 months
Working capital borrowing of Rs. 1 crore	Within 12 months

8. It is also stated by the Resolution Professional that the interests of existing shareholders were altered by the Resolution Plan as under:-

Sl. No	Category of Share holder	No. of shares held before CIRP	No. of shares held after the CIRP	Voting share (%) held before CIRP	Voting share (%) held after CIRP
1	Equity	7744000	Nil	100%	Nil
2	Preference	0	0	0	0

9. The Learned Counsel for the Resolution Professional contended that earlier Resolution Applicant submitted Bank Guarantee for Rs. 25 lakhs dated 29.06.2019 for a period of 6 months (valid upto 29.12.2019) in favour of SBI towards EMD and is to be considered as Performance Security. The Bank guarantee would cover the plan period and shall be forfeited, in case Resolution Applicant fails to implement the plan after approval by this Tribunal. Subsequently, the Resolution Professional was directed to submit Bank Guarantee for Rs. 25 lakhs in favour of PRUDENT ARC LIMITED. Therefore, the Resolution Applicant filed Bank Guarantee No. 987GPGE200080003 dated 08.01.2020 issued by Canara Bank for Rs. 25,00,000/- which is valid up to 08.04.2020 in favour of PRUDENT ARC LIMITED.
10. It is submitted that the total plan outlay including refurbishment and working capital margin required is envisaged at Rs. 10.40 crores apart from bank borrowings of Rs. 1 crore for working capital. An amount of Rs. 0.50 crores is proposed to be raised through

capital and Rs. 9.90 crore through unsecured/ inter-corporate deposit / other loan aggregating to Rs. 10.40 crores.

11. The Learned Counsel for Resolution Professional would further contend that the Unit shall be handed over to the Resolution Applicant upon payment of upfront amount as proposed in the Plan within 30 days. However, it is also laid down in the Resolution Plan that *if the Resolution Applicant is not able to get proper independent access to the CD's land within 6 months from the vesting date, and proposes to sell the land to any person, the same is subject to resolution plan amount being paid in full and such sale shall not result in violation of any other provision of the Code.*
12. The Resolution Applicant is considering appointment of Insolvency Professional for supervising the implementation of the Plan until the final payment is made.
13. The Learned Counsel for the Resolution Professional would further contend that Resolution Applicant has made a provision of Rs. 0.30 crores towards CIRP costs and that if the amount incurred for CIRP cost is more than the amount proposed, then the same would be borne by the Resolution Applicant. In case the expenses incurred are less than the proposed amount in the plan, the difference amount shall be refunded to Resolution Applicant. The bid amount is above the Liquidation Value.
14. 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.

15. The Resolution Applicant has submitted an affidavit in terms of 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.
16. It is decided by the CoC that an independent Insolvency Professional registered with IBBI to be appointed as monitoring committee for supervision of implementation of resolution plan.
17. The 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 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
18. The CoC further recommended to consider the request of Resolution Applicant sought at clause 18 (j) of the Resolution Plan which is to allow the Company under new management, to carry forward the losses under IT including any business losses for setting off against the taxable profits of future years', in spite of non-filing of returns/ delayed filing of IT returns and change in shareholding under Sec 79 of IT Act.
19. The Learned Counsel for Applicant further stated that the Resolution Applicant sought certain exemptions/or reliefs in the Resolution Plan which are essentially required for effective implementation of the Resolution Plan. In this connection, we are of the view that these exemptions can be granted in view of Insolvency &



Bankruptcy Code (Amendment) Act 2019 which came into effect from 16.08.2019. As per the amendment of Section 31 (1), the Resolution Plan is binding on the central Government, any State Government or any Local Authority to whom a debt in respect of the payment of due arising under any law for time being in force such as authorities to whom statutory dues are owed. So, the exemptions sought in the Resolution Plan are subject to the provisions of Section 31 (1) of the Code as amended wherever applicable.

20. The Resolution Plan was approved by the CoC with 100% voting share. The upfront amount offered by the Resolution Applicant is more than the Liquidation value. The Resolution Plan provides for payment to all the stakeholders including Operational Creditors. Necessary provision is made for payment to Operational Creditors. Provision is also made for monitoring the implementation of the Resolution Plan after approval. The Bank Guarantee is also provided as required under CIRP Regulations. Thus, the Resolution Plan dated 04.01.2020 submitted by M/s SVSS COMMERCIAL PRIVATE LIMITED was approved by the CoC having voting share of more than 66%. The Resolution Plan meets all the requirements. The Resolution Professional furnished Form-H.
21. The argument advanced by the Resolution Professional is that as per the decision of CoC, the Bank Guarantee is to be returned to Resolution Applicant after three months. The Resolution Applicant is requesting the Tribunal that the Bank Guarantee given for three months of Rs. 25 lakhs which is valid up to 08.04.2020 be returned to the Resolution Applicant on payment of

upfront amount, which to be made within 30 days from the vesting date. The Resolution Applicant in the Plan has undertaken to pay the balance of Rs. 4.5 crores to the Financial Creditor within 5 months from the vesting date. Therefore, the request of the Resolution Applicant cannot be acceded to. The Resolution Applicant can be permitted to take back the Bank Guarantee only after payment of Rs. 4.5 crores as per the plan, which is 5 months from the vesting date. The Bank Guarantee initially given for 3 months is also required to be extended for 5 months and the Resolution Applicant is directed to extend the bank guarantee for the remaining two months on or after 08.04.2020. The intention of taking the Bank Guarantee from the Resolution Applicant is to ensure that the Resolution Applicant comply the terms of the Resolution Plan. When such is the case, the Resolution Applicant cannot be permitted to take back the PBG before payment of amount agreed. Therefore, in the circumstances the Resolution Applicant is permitted to take the PBG only after payment of balance which is Rs. 4.5 crores that is due within 5 months from the vesting date and further Resolution Applicant is directed to extend the Bank Guarantee for the remaining 2 months also w.e.f. 08.04.2020.

22. The Resolution Applicant is also seeking some reliefs particularly the losses to be carried forward as per Section 79 of the IT Act. The Resolution Plan is binding on the Governmental Authorities as per the amendment of Section 31 (1), which came into effect from 16.08.2019. So, the exemptions sought in the Resolution Plan are subject to the provisions of Section 31 (1) of the

Code as amended wherever applicable. The appropriate authorities to act accordingly in terms of Resolution Plan as far as other concessions sought for by the Resolution Applicant in the Resolution Plan. Thus, the Revised Final Resolution Plan dated 04.01.2020 submitted by M/s SVSS Commercial Private Limited / Resolution Applicant deserves to be approved.

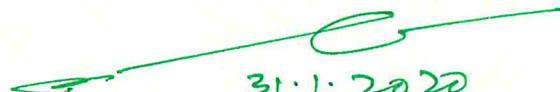
23. While approving the Resolution Plan, this Tribunal pass the following orders:-

ORDER

- 23.1 The Revised Final Resolution Plan dated 04.01.2020 submitted by M/s SVSS COMMERCIAL PRIVATE LIMITED which is approved by members of CoC having 100% voting share stands **approved** as per Section 31 (1) of the Code. In other words we are satisfied with the Revised Final Resolution Plan dated 04.01.2020 of M/s SVSS COMMERCIAL PRIVATE LIMITED as approved by Committee of Creditors under Section 30 (4) of the Code and it meets the requirement as referred to in Section 30 (2) of IBC, 2016. Accordingly, the Resolution Plan stands approved with above observations and the same is binding on 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, such as authorities to whom statutory dues are owed, Guarantors and stakeholders involved in the Resolution Plan in terms of Section 31 (1) of the Code.



- 23.2 The moratorium order passed under Section 14 shall cease to have effect from today.
- 23.3 The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.
- 23.4 The Resolution Applicant shall obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan or within such period as provided for in such law.
- 23.5 The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.
- 23.6 In terms of above, IA 69/2020 filed by Resolution Professional under Section 30 (6) and 31(1) of IBC, for approval of Resolution Plan stands disposed of.


31.1.2020
RATAKONDA MURALI
MEMBER (JUDICIAL)